TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 592.

JOHN MILES, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF UTAH TERRITORY.

FILED OCTOBER 13, 1879.

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1 In the supreme court of Utah Territory, June term, A. D. 1879.

TERRITORY OF UTAH,
County of Salt Lake, ss:

Be it remembered, at the June term of the supreme court of Utah Territory, A. D. 1879, begun and held at Salt Lake City, county of Salt Lake, Territory of Utah, on the 2nd day of July, 1879, there were present and presiding Hon. Michael Schoeffer, chief-justice, Hon. Philip H. Emerson, associate justice, and Hon. J. S. Boreman, associate justice, and on said day, among the records and proceedings of said court were the following, to wit:

On the June 11th, 1879, John Miles, by his attorneys, Tilford and Hagan & W. N. Dusenberry, & filed with the clerk of said supreme court the records and proceedings had in the district court of the third judicial district of Utah Territory, of which the following is a full, true, and correct copy, namely:

2 *Statement on motion for a new trial.*

In the district court of the third judicial district of the Territory of Utah.

UNITED STATES
vs.
JOHN H. MILES.

Service accepted May 29th, A. D. 1879.

U. S. District Attorney for Utah Territory.

Filed May 31st, 1879.

C. S. HILL, *Clerk*,
By B. P. HILL, *Deputy Clerk.*

3 In the district court of the third judicial district of Utah Territory, county of Salt Lake.

UNITED STATES, PLAINTIFF,
vs.
JOHN H. MILES, DEFENDANT.

Now comes said defendant and makes, files, and proposes the following as his bill of exceptions and statement on motion for a new trial herein to be used on the hearing of the motion for a new trial herein; & if said motion be overruled, then to be used as the statement and bill of exceptions on appeal to the Supreme Court.

The defendant was indicted on the 5th day of December, 1878, by the grand jury of said district for the crime of bigamy, which indictment is in words and figures following, to wit:

Indictment.

4 In the third judicial district court, of the September term, A. D. 1878, of the district court, in and for said third judicial district of Utah Territory, held in Salt Lake County.

UNITED STATES OF AMERICA,
Territory of Utah, ss:

THE UNITED STATES
vs.
JOHN MILES.

Indictment for bigamy.

The grand jurors of the United States of America, good and lawful men, residents of the third judicial district of Utah Territory, legally chosen, selected, empanneled, sworn, and charged in and for the body of said district in the name and by the authority of the United States of America, on their oaths, do find and present that John Miles, late of said district, on the 24th day of October, A. D. 1878, at the county of Salt Lake, in the Territory of Utah, and within the jurisdiction of this court, did marry one Emily Spencer, and her, the said Emily
5 Spencer, then and there had for his wife; and that the said John Miles afterward, and while he was so married to the said Emily Spencer, as aforesaid, and while his said wife, Emily Spencer, was living, to wit: On the 24th day of October, A. D. 1878, at the city of Salt Lake, in the county of Salt Lake and Territory of Utah, and within the jurisdiction of this court, feloniously did marry and take to wife one Caroline Owens, and by and to her the said Caroline Owens was then and there married, the said Emily Spencer, his former wife, being then living and at that time his legal wife, contrary to the statute of the United States of America, in such case made and provided, and against the peace and dignity of the said United States.

G. S. ERB,
Foreman of Grand Jury.

PHILIP T. VAN ZILE,
U. S. District Att'y for Utah T'y.

6 That on the 25th day of February, 1879, the defendant was duly arraigned, and to said indictment plead "Not guilty."

That hereafter, to wit, on the 28th day of April, 1879, the case coming on for trial in said court, P. T. Van Zile appeared for the United States, and Tilford & Hagan & W. A. Dusenberry appeared as attorneys for the defendant.

Whereupon the court proceeded to empannel a jury to try the said cause. Among the jurors called and sworn on their voir dire and examined by the counsel for the defense & passed for cause to the district attorney were Oscar Dunn, Robert Patrick & J. F. Midgeley, when the following proceedings took place, and the following questions were asked of the respective jurors by the district attorney. Each individual juror called, having first been instructed by the court in substance as follows: "You are not required in this examination to answer any question put to you the answer to which might in any way tend to criminate you, to convict you of any crime, or furnish a link in the chain of evidence that would tend to convict you of any crime," to wit:

7 In the district court for the third judicial district for the Territory of Utah.

THE UNITED STATES }
vs. }
JOHN MILES. }

Report of testimony and proceedings in the above-entitled cause, beginning April 28th, 1879.

After the jurors had been drawn, sworn on their voir dire, examined by counsel for defendant, and passed for cause, the district attorney examined Mr. OSCAR DUNN, a juror, as follows:

Q. Where do you live?
A. In Brigham City.
Q. How long have you lived there?
A. Lived there 23 years.
Q. How old are you?
A. 24 years.
Q. Do you know the defendant?
A. No, sir.
Q. You said that you had read of this case.
A. Yes, sir; some little; not very much.
Q. What papers did you read?
A. The Deseret News.

8 Q. That paper did not purport to give any of the facts of the case, did it, as taken before the commissioner?
A. I don't know that it did.
Q. What was it you read—a discussion of the case or the testimony before the commissioner?
A. Discussion in the court.
Q. It was editorial, wasn't it?
A. Yes, sir. Just sketches once in a while.
Q. How many articles did you read in the Deseret News?
A. I could not tell anything about it.
Q. Did you read any other paper except the Deseret News?
A. No, sir.
Q. Have you heard the case spoken of since that time by any one?
A. No, sir.
Q. Are you married?
A. Yes, sir.
Q. Are you in polygamy?
(Objected to by def't as immaterial, irrelevant, and incompetent, and not proper examination of juror. Objection overruled; def't excepts.)
A. No, sir.
Q. You have no more than one wife?
(Same objection by defense & same ruling; exception.)

9 A. No, sir.
Q. Do you believe in polygamy?
(Same objection; same ruling; exception.)
A. I think I do.
Q. You believe polygamy is right, do you?
(Same objection; same ruling; exception.)
A. Yes, sir.
Q. You believe that polygamy is ordained of God and that the revelations concerning it are revelations from God?

(Same objection; same ruling; exception.)
A. I do.
Q. And you believe that those revelations should be obeyed?
(Same objection; same ruling; exception.)
A. Yes, sir.
Q. Then, Mr. Dunn, would you think that a party who entered into polygamy by reason of this revelation, or belief in its correctness, should be convicted of crime?
(Same objection; same ruling; exception.)
A. If they was proven so.
Q. You believe that the laws of the land ar' higher than the laws of God?
(Same objection; same ruling; exception.)
A. No, I do not.
Q. Then, if this revelation came from God would you believe
10 that he who acted upon it should be convicted by the law of the land?
(Same objection; same ruling; exception.)
A. No, sir; I do not.
By the district attorney: "I will challenge the juror for actual bias for the existence of a state of mind on the part of the juror which leads to a just inference in reference to the case that he will not act with entire impartiality."
Challenge denied by defendant's counsel.
The court appoints Judge McBride, Mr. Williams, and Judge Hoge as triers.
(Def't objected to the appointment of triers as unauthorized by law.)
Objection overruled; triers appointed.
The triers find the challenge true.

ROBERT PATRICK sworn on his voir dire. * * *

Examined by Judge VAN ZILE: * * *

Q. Do you belong to the Mormon Church?
A. I belong to the church of Jesus Christ of Latterday Saints.
Q. Are you in polygamy?
A. No, sir.
Q. Do you believe in polygamy?
A. I believe in the revelation on that subject.
11 Q. Which revelation do you refer to?
A. The revelation given to Joseph Smith.
Q. You believe it came from God?
A. Yes, sir.
Q. And that it is one of God's laws to this people?
A. Yes, sir.
Q. You believe, too, that he who goes into polygamy conscientiously believing that revelation to be from God is doing God's will?
A. Yes; if he acts according to the revelation.
Q. Do you understand that the law of Congress is in conflict with that law of God?
A. I do, sir.
Q. Do you think Congress has any right to pass any law in conflict with that law of God?
A. I believe they have.
Q. Do you think you would be influenced on the trial of a case where a party had conscientiously gone into polygamy believing that to be a law

of God, if you were trying him under the act of Congress? Do
12 you think that the fact that you believe this is a law of God would influence you in the trial of a person who had conscientiously gone into polygamy believing the same thing.

A. I don't know that I thoroughly understand you.

Q. Do you think your mind would be influenced as a juryman at all in a case where a person is on trial who had gone into polygamy conscientiously believing that to be a revelation from God?

A. No, sir; I do not; I believe all men are amenable to the laws.

Q. Whether they are in conflict with the law of God or not?

A. Yes, sir.

Q. Do you believe this is of divine origin?

(Def't, by his counsel, objected to all the foregoing questions upon the grounds that the same were irrelevant, unauthorized, incompetent, and immaterial. Objection overruled. Def't excepts.)

By Judge VAN ZILE. We challenge the juror for actual bias.

By Judge HAGAN. The defendants excepts to the challenge the way it now stands.

13 By Judge VAN ZILE. If it is a technicality that the gentleman is raising, that it is not for cause, I challenge the juror for cause; the particular cause being for actual bias; for the existence of a state of mind on the part of the juror which leads to a just inference in reference to the case that he will not act with entire impartiality.

By Judge HAGAN. We contend there is no cause made out yet for a challenge of that kind.

By the COURT. I understand the challenge can be made even without an examination, so far as that is concerned; then the triers examine it. I understand this examination here is simply to inform counsel so that they can tell whether they will challenge or not.

By Judge HAGAN. I understand the practice to be different. I will read section 244:

Judge Hagan argues the question.

By the COURT. The facts alleged as the ground of the challenge are that there is such a state of mind in the juror as that he cannot
14 try the case impartially. The court overrules the exception. Defendants except to the ruling of the court. Juror examined by Judge Tilford for defendant:

Q. You say that you believe that celestial marriage or polygamy is in accordance with the will of God?

A. Yes, sir.

Q. You are also aware that there is an act or law of the United States forbidding polygamy?

A. I understand there is a law.

Q. Do you not consider and believe it is a revelation from God that the people of your church shall obey the laws of the land?

A. Yes, sir.

Q. Then you accept it as a revelation from God that you should obey this act as any other act or any other law, and submit to it?

A. As coming from God?

Q. Yes, sir; a revelation.

A. Yes, sir.

Q. As a juryman, then, what would you consider it your positive and imperative duty to do if the evidence satisfied your mind beyond
15 a reasonable doubt that the defendant was guilty of the offense? What would it be your duty, in your opinion, to do in such a case?

A. According to the evidence given, if he had broken the law, he would be guilty.

Q. You would consider it your duty to find him guilty?

A. Yes, sir.

Q. Would you do so?

A. Yes, sir.

Q. Would you try this case as you would any other case?

A. Yes, sir; just as I would any other case.

Q. You believe, then, that it would be your duty to convict if the evidence warranted it, whatever might be the result to the defendant?

A. As a citizen of the United States, yes.

Q. You believe you have nothing to do with the punishment—that the courts and the law-makers are responsible for that?

A. Yes, sir.

(Challenge denied by defendant and appointment of triers objected to. Def't excepts. Same gentlemen appointed as triers and sworn.)

16 The triers find the challenge true.

By the COURT. The triers having found the challenge true the juror is excused.

JOSHUA MIDGLEY drawn and sworn on his voir dire.

Examined by Judge VAN ZILE:

Q. Are you a married man?

(Same objection as in preceeding juror; same ruling and exception.)

A. Yes, sir.

Q. In polygamy?

A. Not that I am aware of.

Q. Do you believe that polygamy is right?

(Same objection, same ruling. Exception. All questions touching juror's belief in polygamy objected to by def't. Objection overruled and exceptions.)

A. I have not had any practice in it. I could not say whether it is right or wrong.

Q. You have an idea whether it is right or wrong, haven't you, without practicing it?

A. I don't know. As I said before I have not had anything to do with it.

Q. Do you belong to the Mormon church?

A. Yes, sir.

17 Q. How long have you been a member of that church?

A. I was born in it.

Q. Always been a member?

A. Yes, sir.

Q. Do you believe in its doctrines and ordinances?

A. Yes, sir.

Q. Do you understand that the Mormon church authorities or the prophet Joseph Smith received a revelation concerning plural marriages?

A. Yes, sir.

Q. Do you believe that he did receive such a revelation from God?

A. Of course I believe it through hearsay, that is all.

Q. I don't care how. I asked you if you believed there was such a revelation received?

A. I cannot say there was and cannot say there was not.

Q. Do you believe that the revelation received by Joseph Smith was from God?

A. I cannot answer that.

Q. Haven't you any belief about it?

18 A. I have got an opinion, but I have not any particular belief.

Q. What is your opinion?

A. My opinion is from public hearsay that he did.

Q. Your opinion is, then, that the revelation was from God?

A. From hearsay; yes, sir.

Q. You believe what you have heard about it, don't you?

A. Yes; so far as I have gone.

Q. Is it your opinion that polygamy is a Divine institution?

A. I expect it is if it is carried out right. I never lived in it and don't know anything about it.

Q. Do you think that one that enters into polygamy conscientiously believing in the revelation as received by Joseph Smith—do you believe that one entering into polygamy believing that conscientiously is doing God's will; is it your opinion that he is?

A. It may be to himself—to his own feelings. I have never been in it myself and cannot answer the question.

Q. You don't have to practice polygamy to have an opinion about it?

19 A. I expect a fellow would have to before he could give a correct opinion.

Q. Wouldn't he have to give some opinion before he went into polygamy?

A. I expect he would want to go into it before he would.

Q. Before he would have an opinion about it?

A. Before he would have anything to do with it.

Q. But I am asking you for an opinion. You have no idea that a man could go into polygamy before he had made up his mind anything about it?

A. No.

Q. Well, now, I am asking you for your belief; not a knowledge but a belief—opinion.

A. Well, I believe it as far as hearsay goes. That is all I know anything about it.

Q. You believe what is taught you by the Mormon church, don't you? You believe their teachings are true?

A. Of course a man could use his own judgement.

Q. I want you to use your judgement. What do you believe about it?

A. I can't answer you. I don't think.

20 Q. Haven't you got any belief; haven't you any opinion?

A. I have been in the Mormon Church——

Q. Haven't you got any opinion about what is right and what is wrong?

A. I have always been taught to do right, as far as I knew.

Q. How can you tell what to do, if you cannot tell which is right and which is wrong?

A. I do that by comparison.

Q. What do you mean by that?

A. We compare men's lives with other men's lives, and see how they run it.

Q. Please make your comparisons, and tell me whether you believe polygamy is right or wrong.

A. I can't do it.

Q. Haven't you any opinion about it?

A. I don't know as I have.

Q. You haven't any belief about it, one way or the other?
A. I would not say it is right, and would not say it is wrong.
Q. I don't want you to say it is right or is wrong, but whether you believe it is right or is wrong.
21 A. I cannot answer. As I said before, I have had no practice in it.
Q. You believe in the doctrines of the Mormon Church?
A. So far as I have gone.
Q. How far have you gone?
A. I have not gone into polygamy.
Q. Did you ever read its doctrines or its covenants or heard them stated?
A. I have heard men preach on them a little.
Q. Have you heard them preach on polygamy?
A. Well, yes.
Q. Did you believe what the preacher said?
A. Sometimes. As I said before, it is for a man to use his own judgement and believe whether the doctrines are right or wrong.
Q. Did you use your judgement?
A. I have so far, and have not went in.
(Challenged by the district attorney for actual bias; for the existence of a state of mind on the part of the juror which leads to a just inference in reference to the case that he will not act with entire impartiality.
22 Challenge denied.
Same triers appointed and sworn.
The triers find the challenge true.
Juror excused.
To each and every of the foregoing questions defendants objected, which objections were overruled and deft. excepted.)

In each and every case where a juror was challenged for actual bias and triers were appointed to try the challenge, the court instructed the triers, as provided in section two hundred and fifty-two (252) of the "Criminal Proceedure Act," now in force in this Territory.

The same questions, touching the religious belief of the jurors Dunn, Midgley, and Patrick, and as to their religion and belief in polygamy, were asked of the following-named persons, called and examined as to their qualifications & belief, respectively, to wit: Henry Dinwoodey, William Asper, E. W. Davis, W. S. Miner, Andrew S. Gray, F.
23 Thuesen, John Hogland, John Oogelthorpe, Alex. Steele, John Wagstaff, L. W. Richards, Wm. Packer, G. B. Wallace, B. B. Bitner, Royal Borvey, John Strock, Geo. Canlam, A. L. Fuller, Fred. Goss, W. C. Neal, Wm. Ridd, Richard Matthews, James Lotham, J. D. Wood, John Cottam, H. W. Hannibal, Enoch Farr, Frank Armstrong, E. B. Tripp, A. L. Buckland, J. Baiton, John Vancott, Jacob Gibson, all of whom were excused for cause, upon report of triers that the challenges were true, to which ruling in each case the defendant then and there duly excepted.

The defendant also, when the occasion first arose, objected to the court appointing triers under the Territorial criminal practice act, upon the ground that the same was not authorized by any law of Congress & was contrary to the provisions of the organic act of Utah Territory. Objections overruled. Defendant duly excepted.

All of said parties above mentioned were excluded from the jury box

for actual bias, based upon questions similar to those asked of the juror.

24 The indictment being read to the jury, the trial proceeded.

JOHN TAYLOR appeared and answered for the prosecution; testified as follows, to wit:

Q. Where do you reside?

A. In Salt Lake City.

Q. Do you know the defendant, John Miles?

A. Yes, sir.

Q. What is your official position in the Mormon Church?

A. Well, I believe the people generally call me president.

Q. You have, at all events, supervision of the matters of the Church of Jesus Christ of Latter Day Saints?

A. Generally. I would state, however, in relation to that, there are a great many associated with me in that.

Q. You say you know John Miles. How long have you known him?

A. I could not say precisely.

Q. You recollect of being on the stand at the time the case of the United States against John Miles was examined before Commissioner Sprague?

A. Yes, sir.

Q. I desire to call your attention to some facts brought out on
25 that examination. I do this simply to call your attention to the matter. Do you recollect about the time it was alleged that John Miles entered into a plural marriage?

A. I could not say as to the date.

Q. Do you recollect about the time?

A. I could not say about the time. I would not like to mention any particular date. I should remember it better at that time than I should now, for it was then fresher on my memory.

Q. Prior to the time that it is said that he entered into this relation did you see John Miles?

A. Yes, sir.

Q. Do you recollect about how long it was before that time?

A. No, sir; I do not.

Q. Whether it was a long time or a short time, perhaps you can recollect?

A. I could not say definitely, sir, about that. I don't think it would be very long.

Q. Ten days or two weeks?

26 A. Perhaps two or three weeks or it might be shorter. I am not prepared to say definitely. In fact to say he entered into it I do not know.

Q. I am not asking for that. I say at the time it was alleged?

A. Yes; that is very proper.

Q. Where did you see him?

A. I saw him in my office.

Q. Do you recollect who was present at the time?

A. I think that Erastus Snow was present for one, and, I think, Joseph S. Smith, perhaps, for another.

Q. And Mr. Woodruff, do you recollect?

A. I think perhaps he was, but I could not say definitely; but I gave a statement before in regard to that matter, and I should not change it at the present.

Q. Why I call your attention to it is, I understood you to say before

that Woodruff was present and also Reynolds. Do you recollect whether Reynolds was present?

A. I think he was, sir.

Q. Do you recollect any one else being present that came there with Miles?

27 A. There were some ladies present there with him?

Q. Who were those ladies? Who did you understand that they were?

A. One of them was—what is the name? I forget now—Owens is it?

Q. Caroline Owens?

A. Yes, sir; the others I did not know them.

Q. Was Miss Emily Spencer and Julia Spencer there?

A. I think so, but I was not sufficiently acquainted to know them.

Q. Did you understand at the time that was Emily and Julia Spencer?

A. I understood, at the time, it was some parties he was desiring to be associated with.

Q. In marriage?

A. Yes, sir; in marriage.

Q. Did you understand Emily & Julia Spencer were the parties there present?

A. Yes, sir; that would be my impression about it.

Q. That was your understanding?

A. Yes, sir.

Q. Will you state to the jury the object of the visit and what occurred?

28 A. The object of the visit, as I understood it, was to enquire into some points—the rules in regard to some matrimonial engagements that were——

(Here witness was interrupted and afterward continued:)

The object, as I understood it, was to ask from me which would be the proper course to pursue, and which should take the precedence, if they should get married.

Q. You say they—whom do you refer to? That is, if the defendant should marry those three girls?

A. Yes.

Q. Which should take the precedence if the defendant should marry those three girls?

A. Yes, sir.

Q. Well, what further?

A. That was the main question, as I understand it.

Q. What else was done or said?

A. I told them in relation to that, that such things generally went by age, according to the best of my recollection—in fact that would be my statement—and that the oldest would have the precedence if

29 they were going to enter into any relations of that kind.

Q. That is the oldest girl should be the first wife and the next oldest should be the second?

A. Yes.

Q. And the youngest the third?

A. Yes.

Q. Was anything else said at that time?

A. Yes, sir. I told them on the back of that, that inasmuch as the thing seemed to be very much complicated in relation to this matter, that they were all of them, so far as I was concerned, released from any arrangement they may have entered into, and if they entered into any

further relations pertaining to those matters, they did it on their own responsibility and not mine.

Q. You understood at that time from the defendant, that he had engaged himself to be married to those three girls, did you?

A. Yes, sir.

(Answer objected to by defendant's counsel. Objection sustained.)

Q. Did the defendant say at that time whether or not he had engaged himself to those three girls?

30 (Objected to as leading. Objection sustained.)

Q. What did he say about that matter?

A. What did the witness say?

Q. What did the defendant, Miles, say?

A. The defendant? Yes; excuse me, I stand corrected. I don't know that there was anything said. I gave my decision and it was attended to, I suppose.

Q. Was anything said by any of the parties present, if so, what, with relation to any prior engagements between the defendant and the three girls?

A. Oh! There was a long story about that, that it would take quite a long time to tell. I think I told it before.

Q. You did. It was quite interesting, and I wish you would tell this jury. Won't you relate what was said about that?

A. If it is desired I can do so. I think you have it written there.

By the COURT: He seems to desire it. It is for the purpose of being evidence before this jury. What you said then is not in evidence before these gentlemen.

A. As I understand the thing, then, I will state it to the best of my recollection.

31 Q. State the substance, to the best of your recollection, of what was said and by whom.

A. In relation to the matter I was informed, whether at that time or a prior time I am not prepared to say, but I was informed—I think it was previously to this——

By Judge HAGAN:

Q. By whom? Informed by the defendant?

A. I could not say precisely.

(Defendants object to any statements but those of the defendant.)

Q. State what was said by the defendant or these ladies, in his presence, in relation to that.

A. I don't know that there was anything of that sort said at that time. This other thing I related before, I related at the request of the court.

Q. Do you recollect now whether or not the defendant called upon you a few days prior to that visit?

A. Yes, sir, I do.

Q. In relation to the same matter?

A. In relation to the same matter, sir.

Q. Did he then make a statement of the situation?

32 A. I think not Mr. Miles. I think Miss Owen called upon me in relation to that matter.

Q. Called alone in relation to the same matter?

A. In relation to the same matter.

Q. Do you recollect now whether or not the defendant—didn't the defendant call at some time prior?

A. I could not positively say. I think perhaps he did, but I would not be positive.

Q. Now, perhaps I may refresh your memory. Didn't he call prior to the call from Miss Owens, and didn't Miss Owens remind you he had called and she came to see about it?

A. I could not say. I am not quite sure about it.

Q. See if you can refresh your memory as to the prior call by the defendant, Miles?

A. I could not at present, sir. I may perhaps have said something about that at the examination before the commissioner. It would be more fresh on my memory then than it is now. I will stand by what I said before there.

Q. We could not read that here.

33 A. I could not say, then, in relation to that.

Q. You cannot remember?

A. No, sir; I would state in relation to that, that I have hundreds of people coming to see me, and it is very difficult for me to remember all the circumstances that transpire, associated with the various conversations and business that they come upon.

Q. In your position I ask you whether or not you are what might be termed the head counsellor of the church?

A. I presume I should so be considered.

Q. In matters of importance, are you counselled with by members of the church, as to their actions?

A. Well, yes; I am a great hand for counselling with men.

Q. Now, at this conversation that has been referred to, that you have stated a portion of, do you recollect having any talk with Miss Caroline Owens?

A. Yes, sir; I had a talk with her; I remember that distinctly.

Q. That was in the presence of Mr. Miles; they were all together?

A. No, sir; I think not, if you refer to the prior conversation.

34 Q. No; I refer to the conversation in your office when they were all there together?

A. No; I had nothing there except what was public.

Q. You talked with Miss Carrie Owens at that time in the presence of those two ladies and Mr. Miles, didn't you?

A. Yes, sir.

Q. You had a conversation there between you?

A. Yes, sir; I don't know much she talked.

Q. State the substance, as near as you can remember, of that talk between you and Miss Caroline Owens; I mean when the defendant was there with the three girls.

A. I will state what I said. I think according to the best of my memory, it was something like this: I told them we had an order in some of our church operations, that in case a family were all believing in our doctrines and desirous of being baptized, we first baptized the man, the head of the house; then his wife, then the children in regular succession according to age, the oldest first; and that in a case

35 of this kind if these parties were desirous to enter into matrimonial relations, that would be the order of it.

Q. The oldest first?

A. The oldest first; I think that is about the nature of it.

Q. Did Miss Owens have anything to say to that?

A. I don't know whether she did or not. I think she felt a little disappointed.

Q. Did she desire that in this case the order be changed if it could be?

A. I don't remember. She did when she was talking alone with me,

but whether she did the other time, I don't know anything about. I could not say.

Q. Which one of the girls did you understand to be the oldest?

A. I could not say for I was not acquainted with them.

Q. Wasn't it talked there and didn't you state before which was the oldest?

A. I think that one of these other girls was considered to be the oldest: this Miss Owen between them, and the other younger, if my memory serves me right.

Q. To refresh your memory I ask you if it was not there under-
36 stood while the parties were there that Miss Emily Spencer was the oldest of the three?

(Objected to by counsel for deft.)

A. I don't know, sir. I am not acquainted with the names of those parties.

Q. As president of the church, do you have the care and custody of all its records?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Is there a record in which marriages in the endowment house are entered?

A. I should presume there is.

Q. Do you know?

A. I don't know positively, but I presume there is.

Q. What is that record called?

A. I could not say that, sir.

Q. Has the church the care and custody of that, sir?

A. That I don't know, sir.

Q. Isn't it kept in your office?

A. I don't know that even, sir.

Q. You have charge of the office there, haven't you?

A. Yes, sir.

Q. Don't you know what is kept in the office?

37 A. No, sir. I have quite a number of clerks there—7 or 8 or 9—I don't know how many. They have their several departments and arrangements.

Q. Would that record be kept in your office?

A. It would not necessarily belong to that office.

Q. Don't you know whether it is kept there or not?

A. I do not, sir.

Q. You have no idea about it?

A. I may have an idea about it, but I don't know anything about it.

Q. Have you ever seen it?

A. I could not definitely say that I have. I think perhaps I have, but I could not definitely say so. It is a thing I have never investigated.

Q. Don't you ever have any occasion to make reference to it?

A. No, sir; not personally.

Q. Is this defendant a member of your church—the church of Jesus Christ of Latter Day Saints—Mr. Miles?

A. Yes, sir. He was at the time, and I don't know of anything that has occurred since to disfellowship him.

38 Q. Did he occupy any position in the church—have any office?

A. I am not aware of it, sir.

Q. He has been a missionary, hasn't he?

A. I don't know. I think he did, perhaps, go on a mission. I am not sure. I think he went over to England, but whether in the capacity of a missionary or on his own business, I am not prepared to say.

Cross-examined by Judge HAGAN.

Q. You are acquainted with the rules and doctrines of the Mormon Church relating to marriage, are you not?

A. Yes, sir.

Q. How many kinds of marriage are there in that church?

By Judge VAN ZILE: I would like to ask the witness a question.

Q. Are those rules and ordinances in writing or printed?

A. I don't know that they are, sir.

Q. Do you say they are not?

A. I could not say they are not, nor I could not say they are.

Q. Why, don't you know, as president of the church, whether certain ordinances of the church are printed or written?

39 A. No, sir.

Exam. by Judge HAGAN continued.

Q. How many kinds of marriage are there in the church to which you belong?

A. Well, I should have to reflect a little upon that.

Q. Isn't there a marriage for time?

A. There is a marriage, in the first place—the marriage of young people—a young man with a young woman. We have marriages again of men with other women afterwards; we have marriages that pertain to time only, and we have marriages that pertain to time and eternity, and then we have some that are married only for time, and some only for eternity. So that it becomes quite a complicated question to answer definitely as to the numbers. There would be 4 or 5 different kinds, according to our ideas of things.

Q. In the marriages performed in your church under the head of marriages for eternity, what name does the woman bear? Is she or is she not called his wife?

A. Yes, sir.

Q. Denominated as such?

A. Yes, sir.

40 Q. What is the distinction between a marriage for time and a marriage for eternity?

A. The one holds good according to the usual form of marriage generally, until death separates them.

Q. That is, they cohabit as man and wife?

A. Sometimes, and sometimes not, according to circumstances. The other we consider reaches into eternity and the man and woman have a claim upon each other in the other world. I would state in addition to these marriages before referred to that we have marriages also for the dead as well as for the living. That is another branch of it.

Q. Now, what I wanted to know is this: In a marriage celebrated for eternity in your church, a woman would be denominated as a wife here on earth—would be so called?

A. What is that?

Q. In a marriage for eternity what name would the woman bear here; a wife or not—would she be called his wife?

A. She would be called his wife.

Q. When, as a matter of fact, she was married to him for eternity only?

A. Yes, sir.

Q. Speaking of this interview between yourself, Mr. Miles, and
41 two or three ladies—is it not a fact that the ladies, who were strangers to you, whose names you did not know, left in a dissatisfied state of mind from that interview?

A. I could not say as to that.

Q. Was there anything said to indicate how they felt about it?

A. I could not definitely say in relation to that matter. I told them, as I said before, that they were released so far as the church was concerned, or I was concerned, from any obligations they may have heretofore have entered into, and if they made any further arrangements must be on their own responsibility and not mine, owing to complications that I saw had existed heretofore.

Q. At that the interview ended?

A. At that the interview ended.

Redirect:

Q. Was the council or was it not that if they did marry the man—the three girls—that they should marry in the order you have related?

A. Yes, sir.

Q. That was the council & order?

A. Yes, sir.

42 Q. Now, with regard to marriages with regard to time and eternity, did they counsel you about a marriage for eternity on that occasion, or was it for time and eternity?

A. It would be for both, as I understood it.

Q. And as you understood the conversation there, he desired to take these three ladies for his wives, for time as well as eternity?

A. That was my understanding, sir.

Miss KATE CONNELLEY sworn for the prosecution.

Examined by Judge VAN ZILE:

Q. Your name is Miss Katey Conelly, is it?

A. Yes, sir.

Q. Where do you live?

A. Providence.

Q. Rhode Island?

A. Yes.

Q. Do you know Miss Caroline Owen?

A. I do.

Q. Do you know Mr. John Miles, the defendant?

A. Yes, sir.

Q. Were you in this Territory, or in the city of Salt Lake, a few weeks prior to the 24th of October last?

A. I was.

Q. Where were you stopping?

A. At my brother's house.

43 Q. In this city?

A. Yes, sir.

Q. Where did you first meet Miss Caroline Owens?

A. At my brother's house.

Q. And where did you first meet the defendant?

A. At the same place.

Q. And the same occasion?

A. Yes, sir—no, sir; I met him, I think, once the Monday previous to the——

Q. At the time you met Miss Caroline, was the defendant with her?
A. He was not.
Q. Did you, at any time, prior to this 24th day of October, when it is alleged a plural marriage took place, see the parties together?
A. Yes; I did.
Q. Do you recollect about how long it was prior to that?
A. It was a week and one day before. That was Wednesday, and the following Thursday the marriage was to take place.
Q. You saw them a week and a day before the Thursday on which the marriage took place?
A. Yes, sir.
44 Q. Whereabouts were they?
A. They were at my brother's house.
Q. In this city?
A. Yes, sir.
Q. Did you hear anything said there with reference to the contemplated marriage?
A. I did.
Q. Between the defendant and Miss Owens?
A. Yes.
Q. And any one else?
A. My brother, his wife and I. We all talked of it.
Q. What was the talk about the marriage? Just relate the conversation that was had.
A. Miss Carrie was feeling badly, and said she had been to see John Taylor——
(Defendant's counsel object to what Miss Carrie said.)
Q. Was the defendant present?
A. Yes, sir.
Q. Just state what was said.
A. She said she had been to see John Taylor, and he had told her she could not be his first wife; that Emily Spencer was to be his first wife, herself second, and Julia third.
45 Q. You say Miss Caroline was feeling badly about it?
A. Yes, she was.
Q. Was anything said about why that must be the order?
A. Because it was the rule of the church when they were baptized, that the oldest of the family was baptized first, and so on until they came to the youngest, and Miss Carrie said that she supposed that that would have to be the way it was done.
Q. And the same rule held in marriages?
A. Yes.
Q. Was it stated there who was the oldest?
A. Yes; Miss Emily Spencer was the oldest.
Q. And who next?
A. Miss Caroline next, and Julia third.
By Judge VAN ZILE. I wish you would call this witness as to another branch of the case. At this time I will call her over to her defense for cross-examination.
By Judge HAGAN. We will wait until they get through with the examination in chief.

ANGUS M. CANNON sworn for the prosecution.

Examined by Judge VAN ZILE:
Q. Where do you live?
A. Salt Lake City.

46 Q. Is there any other gentleman by the name of Angus M. Cannon in the city?
A. I have a son.
Q. Any other man that has an establishment—keeps house?
A. I know of no man except myself.
Q. Do you know the defendant Miles?
A. Yes, sir.
Q. Do you know Miss Emily Spencer?
A. I have met her.
Q. Do you know Miss Caroline Owen?
A. I have met one Caroline Owens Maile or Owen Maile.
Q. It is this lady right here?
A. I believe she is the person I have seen.
Q. She is the person we are talking about?
A. Yes, sir.
Q. You have seen her?
A. Yes, sir.
Q. And Miss Emily Spencer?
A. Yes.
Q. And you have seen the defendnat?
A. Yes.
Q. Did you give at your house, on the night of the 24th of October, a marriage party?
A. In October last there was a supper; these people were staying at my house, this Miss Owen and Mr. Miles.
47 Q. Who else?
A. Mr. Miles.
Q. Was Emily Spencer there?
A. Not staying there.
Q. Did you give at your house a supper or party in honor of the marriage of the defendant?
A. Yes; Mr. Miles asked me to get supper——
Q. I asked you if you gave one?
A. No, sir; I didn't give it. Mr. Miles asked me to get supper ready for him and some friends.
Q. Did you get it?
A. I did.
Q. You did not give it?
A. No, sir.
Q. You charged him for it?
A. I charged him for it, and he paid me for it.
Q. What was that party in honor of?
A. He told me that he wanted to get married, and wanted to have some of his friends meet him there at my house and partake of supper with him.
Q. Did he tell you how many wives he expected to take?
A. No, sir; he did not.
Q. He did not?
48 A. No, sir.
Q. Did he tell you he expected to take more than one?
A. No, sir.
Q. Did not?
A. No, sir.
Q. Did he stay at your house after that?
A. Yes, sir.

Q. Did he at any time say to you whether or not he had taken more than one wife?

A. No, sir.

Q. That supper was on the night of the 24th of October, was it?

A. I cannot remember the date. It was in October last, but I cannot remember the date.

Q. Was it the evening of the day upon which it was alleged that Miles took to himself some wives—some plural wives?

A. I cannot tell.

Q. You cannot tell?

A. No, sir.

Q. You don't know that it was the evening of the day that it was reported that he took plural wives in the endowment house?

A. No, sir.

49 Q. Was he arrested the next Friday or Saturday?

A. He was arrested the next day after this supper was given at my house.

Q. And were you a witness at his examination?

A. Yes, sir.

Q. And did you hear the testimony or part of it before the commissioner?

A. I gave my testimony and read the testimony.

Q. Wasn't it alleged there that that day on which you gave a marriage supper, on the night of the day he took to himself plural wives wasn't it alleged——

(Objected to by counsel for defendant as incompetent, irrevalent, and leading.)

By the COURT. It is calling his attention to an alleged fact for the purpose of fixing the date.

(Objection overruled. Counsel for defendant except.)

Q. You read that testimony, didn't you?

A. I read a portion of the testimony before the commissioner.

Q. You heard what was alleged there to be a fact, didn't you?

A. They ruled us out of the room.

50 Q. I ask you if you did not hear in that examination that it was alleged, and didn't you know that it was alledged, and that it was what the trial was about, that he had taken plural wives?

A. It was stated he had taken plural wives. I heard that that was the allegation.

Q. It was the Friday succeeding the Thursday that the supper was at your house, wasn't it?

A. I don't remember. That is what I say.

Q. It was Friday or Saturday, wasn't it?

A. I cannot tell. That is what I say. I cannot tell what day it was.

Q. You can't tell?

A. No, sir.

Q. Is your memory so short you can't remember from Thursday to Friday or Saturday?

A. I believe I said so. My testimony is I cannot remember the day this supper was given at my house.

Q. You cannot remember whether it was Thursday before the Friday or Saturday that he was arrested that the supper was given?

A. The supper was given at my house the day before he was arrested, but I cannot tell you what day he was arrested.

51 Q. So you can remember that it was the day before he was

arrested, the evening of the day before he was arrested, that the supper was given?

A. Yes, sir.

Q. And now don't you recollect the supper was given on the evening of the day upon which he was alleged to have been married?

A. No, sir; I don't remember that. I don't remember when he was alleged to have been married.

Q. You don't?

A. No, sir.

Q. Do you recollect the day of the supper?

A. No, sir; it was in October somewhere, but I cannot tell what day.

Q. I suppose nothing was said about it that you have heard in any way, as to what the supper was given in honor of?

A. Mr. Miles, I said before, asked me—gave my wife some money and said he wanted supper got for himself and friends; that he expected to marry this lady that is here and he wanted supper got for
52 them and there was a supper got at my house for him and some of his friends. That is all I know.

Cross-examination waived.

Mrs. M. J. FOREMAN sworn for the prosecution:

Q. Do you live in the city of Salt Lake?

A. Yes, sir.

Q. Do you know the defendant, Mr. Miles?

A. Yes, sir; I have seen him.

Q. Do you know a lady that they call Emily Spencer?

A. Well, I am not acquainted with her, but I have seen her.

Q. Do you know Miss Caroline Owens?

A. Slightly; yes, sir.

Q. On the evening of the 24th of October were you at the house of Angus Cannon?

A. I was at a party, but I do not know the exact dates.

Q. What party do you refer to?

A. Well, a reception party.

Q. Do you know what reception party it was; what was the party?

A. A wedding party.

Q. What were you doing there?

A. I was not a guest. My daughter was there assisting, and I happened to go in in the evening to help her a little.

53 Q. You were helping about getting up the supper?

A. Yes, sir.

Q. You saw the defendant there, you say?

A. Yes, sir.

Q. And you saw Miss Owens there?

A. Yes, sir.

Q. Did you hear any talk there between the defendant and Miss Owens?

A. Yes, I heard some.

Q. Won't you state what it was?

A. I heard some a little before supper.

By Judge HAGAN, for defendant. What is the object of this?

By Judge VAN ZILE. I don't know what may happen, but if it is for the sake of raising the question, I will state that I expect to prove, during the course of the trial, that he admitted Emily Spencer was his

wife, and it may happen right now. I cannot tell, but that is the expectation.

By Judge HAGAN. In this conversation you intend to draw out?

By VAN ZILE. Yes.

By Judge HAGAN. We object. In the first place, on the grounds that we suppose the object of this is to prove the marriage
54 with Emily Spencer. We object to it as being incompetent and insufficient to prove a marriage in any event, and the admissions of the defendant cannot be received to prove such a marriage, and are irrelavent and immaterial.

(Submitted without argument. Objection overruled. Defendant's counsel excepts.)

Q. What did you hear said there between Miss Caroline Owens and Mr. John Miles, the defendant? Just state the little colloquy that took place.

A. Well, she seemed to not feel very well, and she seemed to think that she——

(Objected to by counsel for defendant.)

By the COURT. What they want of you is to state what they said, as near as you can recollect. If you cannot recollect the words, then state the substance—not what you understood, or what seen. They want what was said in the exact words, if you can recollect; if you cannot recollect the exact words, then state the substance of it as you recollect.

A. Well, he was wanting her to play the piano, I believe, and
55 she refused, saying that she would not play for his wife Emily Spencer, for he had called her such that evening to her. That is pretty much the substance of it.

Q. Ask you if you heard this said by Miss Owens, "If she is your wife, who am I?"

A. Yes.

(Objected to as leading.)

By Judge VAN ZILE. I state it to refresh the memory of the witness.

By the COURT. The answer is given. The only way you can reach it is by motion to strike it out.

By Judge HAGAN. I interposed my objection before the answer.

(Objection overruled. Def't's counsel excepts.)

Q. Did Miles make any answer to that?

A. I did not hear him make any.

Cross-examined by Judge HAGAN:

Q. Where was Emily Spencer at this time?

A. She was in the parlor, and this was in the next room—the dining room.

Q. What room were you in?

A. In the dining room.

Q. You were in the same room with Miles and Miss Owen?

A. Yes, sir; she had come out of the parlor, refusing to play.
56 Q. Did you hear Emily Spencer that evening addressed as Miss Spencer?

Q. No, sir.

Q. What did you hear her called?

A. I did not hear any one speak to her nor speak to her myself, I believe.

Q. You did not?

A, No; I was not introduced nor seen no one.
Q. Did you hear Miss Owens call her Emily Spencer?
A. When she was speaking then about him calling her his wife.
Q. Did you hear her mention her as Emily Spencer or what name?
A. "Your wife Emily Spencer."
Q. You heard Miss Owen then speak of her?
A. Just that way.
Q. And no further?
A. No, sir.
Q. How did you know to whom Miss Owens referred when she spoke to him about Emily Spencer?
A. Why, I saw the lady there that they called that.
Q. Then you knew her as Emily Spencer, did you?
A. No; the impression was that she was his wife.
57 Q. Never mind what your impression was.
A. And that was all through the party, I guess.
Q. Did you hear any one else call her Emily Spencer?
A. I think not.
Q. Only this Miss Owens?
A. Yes.

Miss ELIZA FOREMAN sworn for the prosecution.

Q. Do you recollect being at Angus Cannon's house in this city on the night of the 24th of October last?
A. Yes, sir.
Q. Do you know the defendant, John Miles?
A. Yes, sir.
Q. Do you know Miss Emily Spencer?
A. No, sir.
Q. Do you know her by sight?
A. I saw her once, that is all.
Q. Where?
A. The night of the wedding.
Q. Angus Cannon's?
A. Yes, sir.
Q. Do you know Miss Caroline Owen?
A. Yes, sir.
Q. Were those three parties there that night?
A. Yes, sir.
58 Q. What was that?
A. That was a party down there at Angus Cannon's.
Q. What was going on there?
A. It was a wedding reception, I understood.
Q. Were you there in the capacity of help in some way?
A. I was.
Q. And that was the time that you saw these three parties that I have mentioned?
A. Yes, sir.
Q. Were there other guests present?
A. Yes, sir; there was.
Q. Do you recollect whether the mother of the defendant, Mrs. Miles, was present?
A. I don't recollect.
Q. Did you that night hear a conversation between Miss Caroline Owens and the defendant, John Miles?
A. Yes, sir.

Q. Will you state what it was?
By Judge HAGAN. What is the object?
By Judge VAN ZILE. The same as the other.
By Judge TILLFORD. We make the same objection as before.
(Same ruling by the court, and exception by defendant.)
59 Q. Will you state the substance of the conversation, if you cannot the words?
A. I heard Miss Owen refuse to play the piano for Mr. Miles' wife, Emily Spencer. That is about all.
Q. Do you recollect what Miss Owen said?
A. No, sir; I cannot recollect the words.
Q. You say that she refused to play the piano for his wife Emily Spencer?
A. Yes, sir.
Q. Now you say you heard her refuse to play the piano for Mr. Miles' wife Emily Spencer; won't you state what she said when she refused, if you can?
A. I don't think I can.
By the COURT. State the words if you recollect; if not, the substance.
A. She said, "I will not play for her. You call her your wife. What am I?" That is as much as I remember.
Q. What did Miles say?
A. I don't remember.
Q. Did he make any answer?
A. I think not.
Q. In which room did that occur?
A. In the dining room.
Q. Do you recollect who was there present?
A. Mr. Cannon's family.
Q. In the dining room, I mean.
'60 A. Yes, sir; in the dining room, and mother and myself.
Q. Miles and Miss Owen?
A. Yes, sir; that is all.
Q. And to this you heard him make no reply?
A. No, sir; he did not reply.

Cross-examined by Judge HAGAN:

Q. You said it was a wedding party you understood it to be?
A. Yes, sir.
Q. Who did you understand it from—who did you get your understanding from in that regard?
A. Mrs. Cannon and the family.
Q. For whom was the wedding reception given?
A. For Mr. Miles and Miss Owen.
Q. You say you did not hear what he said in reply to Miss Owens?
A. I did not.
Q. Did he make any answer?
A. I think not.
Q. Were the doors closed between the dining-room and the parlor at the time?
A. No, sir; they were partly open.
Q. How far?
A. Oh, about half way open, I should think.
61 Q. Were they folding or sliding doors?
A. Just a single door.
Q. Who were in the dining-room at the time?

A. Mrs. Cannon and family and mother and myself.
Q. How long did you remain there?
A. I had been there all the evening almost.
Q. What time in the evening was this?
A. About 9 o'clock.
Q. About 9 o'clock in the evening?
A. Yes, sir.
Q. Are you certain of that?
A. Yes, sir.
Q. How long after this did you remain?
A. I went away soon after that.
Q. How many persons were in the parlor at this time?
A. I don't know; I was not in there.
Q. Didn't you go in there at all?
A. No, sir.
Q. About how many?
A. Well, a couple of dozen, I should reckon.
Q. How were the curtains of the window at the time—were they drawn or not?
A. In the dining-room?
Q. Yes.
A. No, sir; they were down.
Q. How were they in the parlor?
62 A. I don't know; I was not in there.
Q. You didn't see?
A. No, sir.

Redirect:

Q. Do you recollect now, upon refreshing your memory, whether Miles did make any statements to Miss Owens in regard to what was said to him about Emily Spencer being his wife?
A. I don't think he did. If he did I cannot remember that he did.
Q. Didn't he say to Miss Owens in answer to that, "Well, you are my wife, too"?
(Objected to by defendant's counsel—first, as going into testimony again, and, next, as being leading. Objection overruled. Defendant's counsel excepts.)
Question read.
A. I didn't hear him; he might have said it, but I didn't notice him.
Q. (By Juror GILBERSON.) When Miss Owen refused to play the piano, did she say it in a kind of passionate way, or cross or angry—what was her manner?
A. She seemed angry at the time.
Q. (By Judge HAGAN.) She seemed angry when she refused to play the piano?
A. Yes, sir.
63 Q. Were you present when Miss Owen refused to play the piano?
A. Yes, sir.
Q. Where was the piano?
A. In the front room.
Q. What is the front room—the parlor?
A. Yes, sir.
Q. Were you in the parlor?
A. No, sir; I was in the dining-room.
Q. Then, were you present when she refused?
A. She came out into the dining-room when she said it.

Q. But you were not present in the parlor when she refused to play the piano?

A. No, sir.

Question by Judge VAN ZILE.—Question and answer read as follows:

"Q. Then were you present when she refused?

"A. She came out into the dining-room when she said it."

Q. That is when she refused, you mean?

A. Yes, sir.

LEO DYKES sworn for the prosecution.

Q. Where do you live?

A. I am working for a man down at Spanish Fork; I live in this city.

Q. Where were you living in October last?

64 A. At my mother's home, in Salt Lake City, in the 14th ward.

Q. Do you recollect being down at Angus Cannon's house at a night when there is said to have been a wedding party there?

A. Yes, sir; I was on the porch. There was me and Louis Cannon and Johnny Cannon.

Q. Do you know this defendant, John Miles? Have your ever seen him?

A. I have seen him; yes, sir.

Q. Do you know the lady here, Miss Caroline Owens?

A. Yes, sir.

Q. Have you ever seen Emily Spencer, to know who she was?

A. No, sir; I don't.

Q. Now you say you were on the porch that night of this wedding reception.

A. Yes, sir.

Q. Who was with you?

A. Johnny Cannon and Lucy Cannon.

Q. Did you see anything inside or hear anything?

A. Yes, sir.

Q. Won't you go on and state to the jury what you saw and heard?

65 A. I saw Miss Owen go towards a lady that was sitting on the stool by the organ, and she said, "I said I would, and I will," and she slapped this lady on the stool. Before she slapped her, he says, "No, you won't; she is my wife; you sit where you are"; and this Miss Owen slapped her. Then Miles says, "I am ashamed of you," several times; and she says, "If you don't keep still I will slap you too." Then somebody took her hands and held them behind her.

Q. Do you recollect who that was?

A. No, sir; I don't know who he was.

Q. Did you hear Miles addressing any conversation to the lady that was sitting on the stool?

By Judge TILLFORD. We had no opportunity to interpose any objection there to the admissions as being incompetent.

By the COURT. It is understood that your point is saved that all this testimony is objected to. And the objection is overruled. And you have your exception.

A. No, sir; I never heard him speak to her only just to say what he did, that she was his wife.

66 Q. Did you hear him say to the lady on the stool that she need not rise?

A. Yes, sir.

Q. State what he said about that.
A. He says to the lady on the stool, "You sit where you are; you are my wife."
Q. What was Miss Owens doing?
A. She was crying; she was standing up.
Q. Did you see Miss Owens after that?
A. She came over to my mother's house the next morning, I think.
Q. Did you see her that evening leave the house?
A. No, sir; not after that, that I know of. I don't remember seeing e r.
Q. Don't you remember seeing her on the street?
A. It was before that that she was on the street.
Q. Who was the lady that was sitting on the stool?
A. I don't know who she was.
Q. It was not Miss Owens?
A. No, sir; it was not Miss Owens.

Cross-examined by Judge HAGAN:

Q. Who did you say was there with you?
A. Johnny Cannon and Lucy Cannon.
Q. What time of night was this?
A. I guess it was about 7 or half-past.
67 Q. It was early in the evening, then?
A. Yes, sir.
Q. Did you recognise any of the persons in the room at the time you looked in there?
A. Only Miss Owens and Miles, and there was Mina Cannon, Angus Cannon's daughter.
Q. Anybody else?
A. I didn't see anybody else I knew.
Q. You saw no one else in the room?
A. There was others in the room, but no one I knew.
Q. How many more in the room?
A. Several others.
Q. About how many?
A. I don't know about how many; there was quite a few in the room.
Q. What part of the house was this window you looked through?
A. In front of the house.
Q. The front is south?
A. Yes, sir.
Q. Were the windows down or up?
A. The windows were down, but the blinds were open; the curtains were up.
Q. The blinds open?
A. Yes, sir.
Q. What direction was the piano or organ you speak of?
A. In the northeast corner of the room.
Q. What direction would that be from where you stood?
68 A. Right off that way.
Q. Which window were you standing at?
A. At the east window, at the west side of the door; there is too windows on each side of the door. There is a door in the middle of the house and two windows on each side.
Q. Which window were you standing at?
A. At the east window on the west side. The one nearest the door.
Q. The two Cannon boys were there with you?

A. Yes, sir.

Q. You say some one came up and took her by the arm; do you know who that was?

A. No, sir; I do not.

Q. How many times did you hear him call Mrs. Emily Spencer his wife?

A. Only once.

Q. Is that the time he addressed Carrie Owens?

A. Yes, sir.

Q. What did he say that time?

A. He said, "You sit where you are, you are my wife.

Q. That was addressed not to Carrie Owens, you say.

69 A. No; that was addressed to the lady on the stool.

Q. Did you hear him say to Carrie Owens anything about her being his wife?

A. He says, "No you won't, she is my wife." Then turned to the lady on the stool, and says, "Sit right where you are, you are my wife."

Q. You are my wife?

A. Yes, sir.

Q. You heard him say it twice, didn't you?

A. He says to Carrie Owens, when she says, "I said I would, and I will"—he says, "No you won't, she is my wife." He only said it once, then turned to the lady on the stool, and said, "Sit right where you are, you are my wife."

Q. Is that all he said?

A. Yes, sir.

Q. How many persons do you think were in that room?

A. I could not tell. There was several sitting with their backs to the window, pretty close to the window, and some over in the corner.

Q. You think it was about 7 or half past seven o'clock?

70 A. I guess about that time. It was just a little after dusk.

Q. A little after dusk?

A. Yes, sir.

Q. Were those boys looking through the window at the time?

A. Yes, sir.

Q. Did you have any conversation with them about it?

A. No, sir.

Q. Nothing said about it?

A. Not to them. I told my parents about it.

Q. Was anything said between you boys about the occurrence there at the window?

A. We laughed about it a little.

Q. Talked and laughed a little?

A. Yes, sir.

Q. That was before you left there?

A. Yes, sir.

Q. What did you say about the blinds and the curtains?

A. I said there was shutters on the outside. They were open. The blinds were open and the curtains were up—were pulled aside.

Q. Were the shutters open?

A. Yes, sir; but the window was down.

Q. You refer to the inside blinds when you say they were open?

71 A. There is no blinds on the inside; there is curtains on the inside.

Q. You did not observe any blinds on the inside?

A. No; I don't believe there is any.

Q. How far was it from where you were standing to this piano?
A. About as far as from here to that post, I guess, or a little further.
Q. This lady you did not know was sitting on the stool at the piano?
A. Yes, sir; about that far, or maybe not quite so far.
Q. Was her back or side towards you?
A. Her face was towards me. She was sitting on the stool, and there was a lady that had on a white dress standing up by her with her arm around her neck. She was sitting on the stool and another lady was standing up by her.
Q. From what direction did Carrie Owen come towards her?
A. From the middle of the room. I was standing looking in here and she came off kind of this way (illustrating).
Q. When she went up to her was she behind her or on the side of her?
72 A. She came right up in front of her and slapped her.
Q. Where was Miles standing then?
A. Against the wall and about the centre of the room—against the north wall.
Q. That was away from you?
A. Yes, sir.
Q. How far from Carrie Owen?
A. Half way across the room. She was in the middle and he was against the end.

Miss KATE CONNELLY recalled for the prosecution.

Q. When you were upon the stand before, you testified to having a conversation where Miles, Miss Owens, and yourself were present?
A. Yes.
Q. Ask you if you had at any time an invitation, and, if so, from whom, to a wedding party?
A. I had it by Miss Carrie.
Q. What time was the invitation given you?
A. It was given Friday afternoon, and the following Thursday the reception was to come off.
Q. The invitation was Friday, and the following Thursday the reception was to take place?
73 A. Yes.
Q. Did you attend the reception?
A. I did.
Q. Who did you see there?
A. I met Mr. Miles himself at the door, and he introduced us to the company, Mrs. Emily Miles, Miss Julia Spencer, Mr. and Mrs. Woodruff, and another lady there, I don't remember her name.
Q. You say Miles introduced you to Mrs. Miles?
A. Yes, sir; he did.
Q. State who that person was, and what name he used, if you can.
A. Miss Emily Spencer was the person. I had met her before. Miss Owens introduced me to her as "John's future wife," and it was the same person that I met that evening and Miles introduced me—introduced her—as "My wife, Mrs. Miles, Miss Connely."
By Judge HAGAN. We ask that that portion of the answer be stricken out about Miss Carrie Owen introducing her as "John's future wife."
Motion granted.
Q. The lady John Miles introduced to you as his wife at the
74 reception was Miss Emily Spencer, was it?
A. Yes, sir; it was.

Q. Did you see Miss Owens at that time—at the time of the introduction?

A. No; she was not in the room.

Q. Did you remain in the room at that time?

A. I did.

Q. Did you afterwards see Miss Owens there?

A. Yes; I did.

Q. How soon after this was it before Miss Owens made her appearance?

A. It may have been 15 minutes; it was not longer than that.

(Same objection made to this testimony as to the other of the same character as to admissions. Objection overruled. Exception.)

Q. State, if you will, what happened at the time you saw Miss Owen make her appearance.

A. Miss Owens—when she came in Miles walked towards her and wanted her to be seated in the room, and she told me it was no place for her, and she left the room then, but she came back presently and commanded Emily to get off the piano stool.

75 Q. Emily who?

A. Emily Miles.

Q. She who is called in this case Emily Spencer?

A. Yes. And John crossed over and told Emily not to get off the stool. Miss Carrie told her if she did not she would slap her, and she did slap her. Miles says, "Carrie, I am ashamed of you." She told him she would slap him. Just then Mr. Cannon came in and told Miss Carrie he would not have such things in his house; if she would behave herself as a lady, she could stay; if not, she could not, and she went out. Miles remained in the room. He said he had put down his foot and would not have her act that way. As far as putting his wife, Mrs. Emily Miles, out of the house, he would not do it the first night he was married.

Q. What was the statement?

A. He said he would not put his wife, Emily Miles, out of the house the first night they were married—he would be a scamp to do so.

Q. He said this in the presence of the company, did you say?

76 A. Yes, sir; all were present.

Q. Did you hear what was said by Miss Owens at the time; what was said by Miles to Miss Caroline at the time Miss Caroline demanded of Miss Emily Spencer that she get off the stool? What did Mr. Miles say at that time, if anything?

A. He said to Miss Owens——

Q. What did he say to either Miss Owens or Emily?

A. He told Emily not to get off the stool, but I cannot remember the words he used.

Q. Where were you at that time in the room?

A. I was next to Emily, I think, all but; Miss Dora Young, I think, was next to Emily, and I was next.

Q. Was this a sort of sudden affray or otherwise?

A. Sudden. Very sudden.

Q. Now you say that Miss Carry left the room?

A. She did.

Q. In what condition. What was she doing when she left?

A. She was crying when she left the room.

77 Q. Do you know where she went, or didn't you follow?

A. I don't know.

Q. Didn't you see her again that evening?

A. I did.

Q. How long afterwards?
A. I don't know; it was over half an hour. It might have been longer.
Q. Where?
A. She came in—came to supper.
Q. Supper was ready then?
A. Yes, it was.
Q. What occurred at the supper, if anything?
A. Well, she went in with Mr. Miles and Emily. She said there that she did not know as it was her place to take the head of the table, but she was going to and she did, and Miles sat next to her and Emily next.
Q. Did she state why it was not her place?
A. Because she was not the first wife.
Q. Did anything else occur there?
A. Not much of anything, except Mr. Cannon's stating that they would have to choose a name for the ladies, as there was three Mrs.
78 Miles—Mr. Miles' stepmother and the two Mrs. Miles'.
Q. What two Mrs. Miles?
A. Miss Carry Owen and Miss Emily Spencer.
Q. Said they would have to choose a name for each of them?
A. Yes, sir; that is what he said.
Q. Who was that?
A. Cannon, at the supper table.
(Objected to by def't's counsel.)

By the COURT:

Q. In the presence of the defendant?
A. Yes, sir.
(All this evidence objected to by def't as not proving a marriage, the acknowledgement of a wife not being admissable for that purpose; same objection as before; objection overruled; defendant excepts.)
Q. Now, what did Cannon propose about the names?
A: I don't know as there was any arrangement, but afterwards the old lady was called sister Miles, and there was not any other arrangement about it. He told them they should be thankful for such a good supper, for he was married four times and didn't know wher' the supper was coming from each time.
79 Q. Did he say whether he paid for his supper when he was married?
A. I don't remember that he did.
Q. After supper what happened?
A. Miss Carrie was requested to play and she played. Then they thought they would have a dance and they requested Miss Carrie to play for them to dance. She said she would not play for Emily Miles to dance and she did not play. Afterwards she left the room and came back again, and two young ladies came in while she was gone. Miss Williams their names were. She asked Miss Williams if she had been introduced to the two squaws on the other side of the room—she meant the Spencer girls.
Q. She did not feel very good towards the Spencer family?
A. No, sir; she left the room and did not return. When we got ready to leave Miles left the house with Emily Miles and Julia Spencer.
Q. How far did you go with them?
A. We went—I think it is two blocks—right to the corner of Main street, where Kimball & Lawrence's store is.
80 Q. Miles was with the two Spencer girls?
A. Yes, sir.

Q. How did he introduce Miss Julia?

A. "Miss Julia Spencer, Miss Connelly."

Q. About what time was it, if you recollect, when the party broke up?

A. I think it was about 11 o'clock. Somewhere along there; half past ten or eleven.

Q. Can you state about how large a party there was?

A. There was from 30 to 40; somewhere around there; there might have been over 40; I don't remember now just how many there was.

Cross examined by Judge HAGAN:

Q. What time of the evening was it when Miles introduced you to his wife?

A. I think it was about seven o'clock. It might have been half past seven; I don't know. I think it must have been half past seven, because it took us some time to go to the house.

Q. Where was the introduction made—in Mr. Cannon's parlor—the front room?

A. Yes, sir.

Q. You think about half past seven?

81 A. Yes, sir.

Q. What time was it this occurrence took place at the piano?

A. It was about half an hour afterwards. It might have been longer than that, but I don't think it was.

Q. Do you remember the conversation that took place at the piano at the time of this first trouble? Repeat that again, please.

A. Miss Owen commanded Emily to get off the piano stool, and John told her not to. Miss Owen said she would slap Emily if she did not get off, and she did slap Emily. Mr. Miles said he was ashamed of her, and she told him she would slap him, and then Mr. Cannon came in just then, and told Miss Carrie he could not have such things in his house. If she behaved as a lady she could stay, otherwise she could go, and she left the room.

Q. Which door did she go out of?

A. Out of the parlor; out into the front hall.

Q. How long did she remain?

A. I think 20 minutes; it might have been longer.

82 Q. Did Miss Spencer get up?

A. She did not.

Q. She remained there?

A. Yes, sir.

Q. Did Miles say anything to Miss Spencer?

A. He did not say anything to her only what he said to the whole party that was there. He said that Miss Carrie should not slap her again, and he said that he was not going to put her, his first wife, out of the house the first night they were married; he should be a scamp to do so; and he stood by Miss Emily Spencer then at the piano.

Q. What occurred when Miss Owen came back again?

A. They went out to supper.

Q. What time was this?

A. I don't remember the time. It was probably quite late.

Q. About what time?

A. I should think about half past eight or nine; might have been as late as that and might not.

Q. Did you hear Miles introduce Emily Spencer to any one else as his wife?

A. Yes, sir; he introduced her to all of the company that came in.

Q. Can you mention any individual you heard him introduce her to?

A. I think the two Williams girls and a young gentleman that came in afterwards. He introduced to him Miss Carrie as Mrs. Miles, and she resented it.

Q. You think, then, Miles introduced her to the company as his wife?

A. He did. That is, those that came in after I did. There was quite a party there when I came in.

Q. He introduced her in public as his wife, Emily Spencer?

A. No, sir; Emily Miles.

Q. I refer to Emily Spencer.

A. Yes.

Q. Did he introduce Carrie Owen as his wife?

A. He did to this young gentleman; that was all. Miss Carrie seemed to know all the company that was present except him, and he didn't take the trouble to introduce her.

Q. What time of the night did you leave?

A. I think it was about half past ten or eleven o'clock.

Q. You think the company broke up about that time?

A. Yes.

Q. And they had supper about what time?

A. Supper, I think, between 8 and 9. I don't know exactly the time; it might have been later.

Q. About what time did this occurrence take place at the piano?

A. It was about half an hour before supper.

Adjourned until 9.30 o'clock to-morrow morning.

FRIDAY, *May 2nd*, 1879.

M. L. HOLLAND sworn for the prosecution.

Q. Do you know the defendant in this case, Mr. Miles?

A. Yes, sir.

Q. What is your business?

A. At present I am a guard at the penitentiary.

Q. What was your position on or about the 24th of October last?

A. I was an officer of this court.

Q. And for some time subsequent to that time?

A. Yes, sir.

Q. Deputy United States marshal?

A. I was bailiff of the court and special deputy.

Q. You know the defendant?

A. Yes, sir.

Q. Do you know Miss Caroline Owens?

A. Yes, sir.

Q. Will you state whether or not you heard any conversation between Caroline Owens and John Miles just prior to the examination before Commissioner Sprague?

A. I heard nothing prior to the examination, but during the examination I heard conversation between them.

Q. Will you state the occasion and what it was?

A. During the preliminary examination Miss Owens was in the custody of the court or the marshal, and I was sent down to Mr. Angus Cannon's with Miss Owen to get her things from there, and while there Mr. Miles appeared—I don't know but he was there when we went in. While there he, Mr. Miles, tried to coax Miss Owen to go back to him. It seems, then, she had quit him.

(Objected to by counsel for def't.)

86 By the COURT. Use the language as near as you can that was used.

A. There was nothing material there said.

Q. State what was said. Did he come away with you and she?

A. Yes; he did.

By Judge HAGAN. We ask that the former answer about his conclusions be stricken out.

Motion granted.

A. In short, then, he asked if she would come back to him—forsake all others and come back to him. He asked her if she would come back to him. She says, "John, I will, if you will forsake these other women and make me your only wife." After a considerable time he says, "Carrie, I will; I will do it."

Q. Is that all that you remember?

A. Well, without you want me to go in and go back to the house when I was there before.

Q. I want the conversation.

A. Well, that was all the conversation.

Q. Did you hear this language in answer to her saying she would come back to him if he would make her his only wife—did you hear this language from Miles, "Carrie, do you mean it."

A. Yes; and she says, "I do."

87 Q. Where was that conversation had?

A. It was on Main street, this side of Jenning's corner; part of it was there; then they walked along in silence until they came to the head of the stairs in the Wasatch building. There is where he says, "Carrie, do you mean it?" at the head of the stairway, and she says, "I do."

Q. What was Miles' answer to that when she said "I do."

A. He says "I will."

Cross-examined by Judge HAGAN:

Q. Do you pretend to use the exact language that was used by Miles and Miss Owen on that occasion?

A. As near as I can. I don't know that I use the exact words, but the substance I do.

Q. What was it she said to him?

A. She says, "If you will forsake these other women and make me your only wife I will come back to you."

Q. If you will forsake the other women?

A. Yes.

Q. Where did Mr. Miles leave you that day?

A. In the marshal's office, I believe.

88 Q. Where did he start with you?

A. From Mr. Cannon's.

Q. Was he with you all the time?

A. Not all the time; part of the time he was on the opposite side of the street from where we were.

Q. Where did he leave you after he left Angus Cannon's?

A. Well, a few rods this side of Angus Cannon's house.

Q. And went on the opposite side of the street?

A. I think he first walked ahead of us a ways.

Q. Where did he join you again?

A. I think on Jenning's corner; probably before that.

Q. Then how long did he remain with you?

A. I think until we got to the Wasatch building, at the marshal's office

Q. Did he come to the marshal's office?

A. Miss Owens and myself did, and I think Miles went to the office door. I am not positive whether he went in or not; I know he went to the head of the stairs.

Q. On what part of this route did this conversation take place?

89 A. On Main street, a little this side of Jenning's corner.

Q. What conversation, if any, took place up in the Wasatch?

A. Well, it was a part of the conversation that was commenced on Main street. The conversation was not concluded until they arrived here.

Q. Was it a continuous conversation?

A. No; but it was a renewal of the conversation they had on Main street.

Q. Where were they when that conversation was renewed?

A. In the Wasatch building, on the stairway.

Q. You say the exact language was "If you will forsake the other women"?

A. I don't know that that was the exact language.

Q. Was there anything said about the other women at all?

A. Yes.

Q. What was it?

A. I don't know just his words.

Q. Did he say "women" or "wives"?

A. He said "women," I think.

Q. Did he mention their names?

90 A. No, he did not.

Q. "If you will forsake these other women," and what else?

A. "And make me your only wife, I will go back to you."

Q. What was his answer?

A. After some little time he says, "I will; I will do it, Carrie."

Q. Was that his answer?

A. I believe it was.

Q. What did she say?

A. She says, "Well, I will do it, John."

Q. Was that all?

A. That is all I remember.

Q. Where was he when he says, "I will do it"?

A. He was right at the head of the stairs, next to the marshal's office.

Q. Was that the first time he had promised her?

A. Yes, the first time I heard it. He may have promised it before, but I did not hear it.

Q. You testified in this case before, I believe?

A. I did.

Q. At the time you testified before was not that language

91 fresher in your mind, and wouldn't you be apt to remember it more correctly than you would now?

A. I think I would.

Q. When he first accosted her what did he ask her?

A. I don't know, because I didn't hear it. He first spoke to her in Mr. Cannon's house.

Q. Did you hear him ask her to go back to him?

A. I did.

Q. Where was that?

A. He first asked her in Cannon's house, and again on Main street; again in the Wasatch building.

Q. You, in your testimony signed and sworn to by you, say this, that he didn't say anything to her about his other wives?

A. He said "women."

Q. He used the word "women," then, did he?

A. Yes.

Q. You say in your testimony that he says that she says, "John, I will if you will take me for your only wife"?

A. Yes.

Q. To this he made no reply for some time?

92 A. Yes.

Q. Then you say the next answer was, "Do you mean it?" Is that correct?

A. I guess it is.

Q. You think that was correct?

A. Yes.

Q. What office did you hold then?

A. I was in the employ of the marshall.

Q. What office did you hold at that time?

A. I was bailiff and deputy marshall.

Q. At that time was Miss Owen in your charge?

A. Yes, sir.

Miss KATE CONELLY recalled for further cross-examination.

Q. In your examination yesterday you spoke of a conversation that occurred at your brother's prior to this wedding party.

A. Yes, sir.

Q. I omitted to ask you who was present at that conversation.

A. My brother, his wife, Mr. Miles, Mr. Miles' stepmother, Miss Carrie, myself, and the children, but I don't suppose they heard the conversation.

Q. Your brother and his wife?

93 A. Yes; and Mr. Miles, his stepmother, and Miss Carrie.

Q. Were those present at all this conversation; present during the entire conversation?

A. They were.

Q. Who accompanied you to Mr. Cannon's?

A. My brother.

Q. Who was present when Miles introduced Emily Spencer to you?

A. Miss Dora Young and her mother, and Mr. Woodruff, Emily Miles, and Julia Spencer, and there was another lady present at the time.

Q. How long was it after you arrived there?

A. It was a very few minutes. I don't know just how long; just as soon as we went into the room.

Q. It was in the parlor?

A. Yes.

Q. Was your brother in the room?

A. He was.

GEORGE REYNOLDS called as a witness for the prosecution.

(Defendant's counsel object to his being a witness in this case, because he has been convicted of a felony. Objection sustained.)

94 JOSEPH SMITH sworn for the prosecution.

Examined by Judge VAN ZILE:

Q. Where do you live?
A. In Salt Lake City.
Q. Are you a member of the Mormon Church?
A. Yes, sir.
Q. What office or position do you hold in that church?
A. I am an elder in that church.
Q. Do you know the defendant here, John Miles?
A. I have seen him occasionally.
Q. How long have you known him by sight?
A. I could not tell you, sir.
Q. Did you know him as early as October, 1878?
A. I think I did.
Q. Did you see him last October in the endowment house?
A. I could not say positively. I think likely I did.
Q. Were you in the endowment house on Thursday, the 24th of October last?
A. I am not positive. I am not certain whether I was or not.

95 Q. Do you recollect about the time Mr. Miles was arrested for bigamy?
A. No, sir.
Q. You don't recollect it?
A. No, sir.
Q. Do you recollect about the time he was examined before Commissioner Sprague?
A. I don't recollect anything as to the time.
Q. As to the occasion?
A. I remember the occasion.
Q. Did you see him in the endowment house just prior to that occasion—a few days prior?
A. It is possible that I may have done.
Q. Did you, or did you not?
A. I can't say whether I did or not.
Q. You knew him at that time?
A. I had seen the gentleman once or twice, I think, before that time.
Q. Did you perform some marriage ceremony upon that occasion that I refer to, in the endowment house?
A. It is possible that I may have done.
Q. Do you know John T. Caine, junr.?
A. I know him by sight.

96 Q. Did you see him there that day?
A. I think I did.
Q. Were you in the endowment house the day he was married?
A. I believe I was.
Q. That is the day I refer to.
A. I was there, I believe, that day.
Q. Did you see John Miles there that day?
A. I think possibly I did.
Q. Don't you know you did?
A. I don't know positively that I did.
Q. You don't know positively?
A. No, sir.
Q. Did you perform some marriage ceremonies there that day?
A. I think it is possible I did.

Q. Almost anything is possible; I want to know whether you did or did not.

A. I very frequently do on days of that kind.

Q. How many ceremonies do you think you performed that day?

A. I don't know.

Q. More than one?

A. I don't know, sir.

Q. Did you perform one?

A. I think I did.

Q. More than one?

97 A. I could not say.

Q. You think you performed one, but cannot say whether you performed more than one or not?

A. I think I did perform more than one.

Q. At what time in the day?

A. I don't know.

Q. Morning or afternoon?

A. I don't know, sir.

Q. You have no recollection about it?

A. Well, my recollection would be that it would be in the afternoon, if at all.

Q. You know where the sealing room in that endowment house is, I suppose?

A. Yes, sir; I do.

Q. Where is it located?

A. I object to answering the question.

By the COURT. What is the objection, Mr. Witness; upon what ground do you base your objection?

A. I cannot see the relevancy.

By the COURT. That is not for you to determine. Now what other objection?

A. I object, sir, to giving any explanations whatever in regard to that house, conscientiously feeling that I am in honor bound not to do so.

98 By the COURT. Mr. Smith, this is a court of justice, and so long as the questions are proper and there is no reason for not answering them because it would have any tendency to convict you of any crime or furnish a link in the chain of evidence, to do so, you will have to answer the question. Under certain circumstances a witness may be privileged from answering, but other circumstances and other cases he must answer a question. In a judicial investigation required by the laws of the land persons must answer those questions.

Question read.

A. If the court rules I shall answer the question, I do it against my protest, because I do not consider I have any right, and that I am in honor bound to my people and to my God to hold matters and things in that house sacred in my religion.

By the COURT. That is possibly so. Of course, after this explanation, and so long as the question is put and there are none of the

99 grounds that furnish any reason why a witness should not answer a question that is put in a judicial investigation, you must answer. You have made your explanation and satisfied, perhaps, your conscience in that matter. Now the court rules and you must answer.

A. The sealing room, then, is located in the south end of the house.

Q. Up stairs or down?

A. Up stairs.

Q. Is it the south end or southwest corner?
A. In the south end.
Q. Does it extend clear across the end of the building?
A. I think not.
Q. Which corner of the building?
A. It is in the southwest corner.
Q. In that sealing room is where marriage ceremonies are performed, or sealing ceremonies; am I correct?
A. As a rule.
Q. The door from that room, which way does it come out of the room—going which way?
A. It goes east.
Q. It comes out of the room going east?
A. Yes.
100 Q. Were you in that sealing room that day?
A. If I performed any marriage ceremonies I was, sir.
Q. I don't doubt that. I asked you if you were in the sealing room that day?
A. I think I was.
Q. Did you see John Miles in there.
A. Not to my recollection.
Q. Are you certain about it?
A. I am not certain. That is my recollection about it, that I have no recollection of seeing him there.
Q. Do you know Emily Spencer?
A. No, sir.
Q. Did you ever see her?
A. Yes, sir.
Q. Did you know her by sight?
A. No, sir; I don't think I would. I saw her once, I think.
Q. Where?
A. At President Taylor's office.
Q. On the occasion President Taylor refers to of her coming there for counsel?
A. Yes.
Q. Did you see her in the endowment house?
A. Not that I know of.
101 Q. Don't you think you would have known it if you had seen her there?
A. I don't think I should. I don't think I should have known her there.
Q. Didn't you perform a marriage ceremony in the endowment house between John Miles and Emily Spencer?
A. Not to my recollection.
Q. Do you swear you did not?
A. No, sir; I don't swear I did not. I swear I did not to my recollection.
Q. You won't swear you did not?
A. I could not swear I did not. If I perform' marriage ceremonies I may have performed a ceremony between him and Emily Spencer, but I don't recollect that I did.
Q. People going to the endowment house to be married, some of them have to commence and take their endowments before they can be married, don't they?
A. I think some of them do.
Q. Unless they have taken their endowments they are not eligible—

cannot be married, can they, in the endowment house, according to your rules and regulations?

A. I believe that is the rule, sir.

102 Q. Now do you recollect of having married Emily Spencer and John Miles during the time that Miss Carrie Owens was taking her endowments?

A. I don't recollect.

Q. Do you swear you did not?

A. I will swear I do not recollect.

Q. But you won't swear you did not?

A. No, sir; I don't swear I did not.

Q. Did you see Miss Carrie Owens in the endowment house that day?

A. I believe I did.

Q. Who else performed marriage ceremonies there that day?

A. I think General Wells did, if any one.

Q. At what time in the day?

A. I don't know, sir.

Q. You were there, were you not?

A. Yes, sir; I was there.

Q. Were there all day?

A. No, sir.

Q. What part of the day were you there?

A. At a portion of the morning and afternoon.

Q. When was General Wells performing marriage ceremonies—during what parts of the day?

A. I don't know, sir.

103 Q. During the time you were there, where were you stationed—where was your place?

A. I was not stationed anywhere; had no place.

Q. Were you not up stairs in that room that the sealing room leads off from?

A. Possibly.

Q. Were you or not?

A. I think I was.

Q. Were you not there most of the time?

A. No, sir; I think not.

Q. What part of the time were you there?

A. That I could not say; I was there and around from place to place.

Q. Did you keep a register there of those who were married that day?

A. No, sir. Of some of those that were married, I think likely I did.

Q. What did you keep that register in?

A. On slips of paper.

Q. What did you do with the paper?

A. Some of them I burned up.

Q. What time were you up there taking these names of persons that were to be married?

A. That I could not say, sir.

Q. Did you burn up the slips of paper?

A. I think I did, some of them.

Q. All of them?

104 A. No; I don't know that I did all of them.

Q. What did you do with them immediately after taking the names?

A. I handed them, I think, to the parties.

Q. What parties?

A. The parties who gave their names.

Q. What did they do with them?
A. They delivered them to the person officiating.
Q. Did you take Emily Spencer's name that day?
A. Not that I recollect.
Q. Do you mean to say you did not or you did?
A. I mean to say, sir, I do not recollect anything of the kind.
Q. Do you recollect any of the names you took?
A. No, sir; I do not, except it may be the lady there (referring to Miss Owens). I recollect something about her from the circumstance of having met her before.
Q. Where had you met her before that time?
A. I met her at the president's office, and also at my house.
Q. You met Emily Spencer at the president's office, didn't you?
105 A. Yes.
Q. Can't you recollect whether you took her name or not?
A. No, sir.
Q. Do you say you didn't take her name?
A. No, sir.
Q. You might have taken it?
A. I might have taken her name.
Q. Did you take John Miles' name that day?
A. I think I did.
Q. More than once?
A. Not that I am aware of.
Q. How many marr*ai*ges were performed there that day as near as you can estimate?
A. I don't know, sir.
Q. I don't suppose you know the exact number. I ask you how many, as near as you can estimate?
A. I have no idea at present. I could not remember anything about it.
Q. 40?
A. I don't know.
Q. What is your estimate?
A. I have no estimate upon it at all.
Q. Can't you make an estimate?
A. I presume I could, but it would be guess-work.
106 Q. I want you to make an estimate; guess-work then to the best of your knowledge.
(Defendant objects to the question.)
By WITNESS. It would be simply guess-work if I did. I could not form any conclusion whatever in regard to the matter.
By the COURT. The question is if you have any knowledge by which you can make any estimate?
A. No, sir; I have not.
Q. Ask you if there was quite a large number of marr*ai*ges there that day?
A. I think likely there was; there usually is.
Q. Is there any book kept at the endowment house in which marr*ai*ges are registered?
A. I don't know, sir——
(Objected to by defendant as immaterial. If the book was produced it would be incompetent.)
By the COURT. There can be no materiality to the objection, as he answers he don't know.
Cross-examination waived.

Miss SUSIE YOUNG sworn for the prosecution.

107 Examined by Judge VAN ZILE:

Q. Where do live?

A. I am living at present in Provo.

Q. Do you know John Miles?

A. I met the gentleman once.

Q. Where?

A. At the house of Miss Dora Young.

Q. When?

A. I could not tell; I don't remember.

Q. Do you recollect whether or not it was the night after the marraige in the endowment house?

A. I do most certainly.

Q. Well, was it that night?

A. No, sir.

Q. Was it before that or after it?

A. I know nothing about the marraige in the endowment house, except what I read or from the statement in the Herald; it was several days before that.

Q. From the statement of the Herald and what you have read, do you locate the time or occasion of the marraige in the endowment house?

A. I don't remember. I have a poor memory for dates.

Q. What don't you remember?

108 A. I don't remember the date of the marraige in the endowment house.

Q. I didn't ask you that. I asked you, from what you have read and what you had heard, do you locate the occasion of the marraige in the endowment house, or the alleged marriage?

A. No, sir.

Q. Do you know when the examination was?

A. Which examination?

Q. Before Commissioner Sprague of John Miles for bigamy.

A. It was in October, but I don't remember when.

Q. You recollect the occasion—recollect about the time when the examination was going on—read the papers, I suppose?

A. Yes, sir.

Q. Where were you at that time?

A. In Provo.

Q. Were you in Salt Lake City on the day that it was alleged the marraige took place?

A. No, sir.

Q. Are you positive about it?

A. Quite positive.

Q. Were you in the endowment house that day?

109 A. No, sir.

Q. Do you know Emily Spencer?

A. I have met her.

Q. Where?

A. In St. George.

Q. When?

A. Many, many times.

Q. Have you met her since the alleged marraige?

A. No, sir.

Q. Have you met Miles since the alleged marraige?

A. No, sir.

Q. Didn't Miles stay at Provo on his trip south after the marraige?
A. I heard so.
Q. Didn't you see him there?
A. No, sir; I was at school. I did not see him.
Q. Didn't you see Emily Spencer there?
A. No, sir.
Cross-examination waived.

DANIEL H. WELLS sworn for the prosecution.

Examined by Judge VAN ZILE:

Q. Where do you live?
A. Live here in Salt Lake City.
Q. Are you a member of the Mormon Church?
A. Yes, sir.
110 Q. What office or position do you hold in that church?
A. Counsellor.
Q. Counsellor to the president?
A. Yes, sir.
Q. Do you perform marraige ceremonies for the church?
A. Very often.
Q. Do you know the defendant, John Miles?
A. I believe I do.
Q. Do you know Emily Spencer?
A. No, sir; I know one Emily Spencer, but I think the one you are talking about is not the one I know.
Q. What one do you know?
A. She lives at St. George.
Q. Got a sister Julia; do you know her?
A. I don't know.
Q. Were you in the endowment house on the 24th day of October last?
A. I don't recollect.
Q. Do you recollect when the examination of Miles for bigamy was had before Commissioner Sprague?
A. I recollect the examination, but I don't remember the date.
Q. The Thursday prior to that examination were you in the endowment house?
A. If I so stated then.
111 Q. Was it a fact—were you in the endowment house.
A. If I so stated then. I presume I was if I said so. I don't remember the date now as well as I did then. Thursdays I am usually there.
Q. Do you remember now of being in the endowment house on the Thursday prior to that examination?
A. I remember being there Thursday prior to that examination; that is, I think it was prior—that is, I don't know whether it was Thursday prior, or the next Thursday but one.
Q. Did you see John Miles?
A. I don't remember.
Q. How?
A. Not that I know of.
Q. Did you know him at that time?
A. No, sir.
Q. Did you see Emily Spencer there?
A. Not that I am aware of.

Q. You can't recollect—you don't know?
A. I don't think I did see the woman there that I know as Emily Spencer.
Q. Can you tell us what woman it is?
A. The woman I know as Emily Spencer is an aged lady.
112 Q. This is a buxom young girl we are talking about.
A. I don't know any such person. I have heard of such a person, but don't know her. I presume it is a daughter of the one I said I knew.
Q. You haven't any doubt about it?
A. Well, I don't know anything about it, sir; it may be or may not.
Q. Don't you recollect seeing her there that Thursday?
A. No, sir.
Q. And don't recollect seeing Miles there?
A. No, sir.
Q. Did you perform marr*ai*ge ceremonies there that day?
A. The day in question I suppose I did.
Q. Do you recollect about how many?
A. Well, if it is the same day that I was questioned on before, I think I performed 45 ceremonies that day. That was according to my recollection then.
Q. How many of those ceremonies were plural marr*ai*ges.
A. I could not tell you; I do not know that any of them were.
Q. Do you know that any of them were not?
A. I don't know.
113 Q. May have been?
A. May have been; yes.
Q. Is the marr*ai*ge any different in plural marr*ai*ge from what it is in any other.
A. Not necessarily.
Q. Well, "Is it?" is the question. "Is it?"—not whether it is necessarily.
A. No, sir.
Q. It is not?
A. No, sir.
Q. The marr*ai*ge ceremony, that is, the joining or sealing of the man and wife to each other—joining them in marr*ai*ge—is performed in what is called the sealing room, isn't it?
A. Might be called that; that is where it is done. It has no particular name that I know of.
Q. Where is the room located that the marr*ai*ge ceremony is performed in?
A. It is in the southwest corner upstairs.
Q. Well, the marr*ai*ges culminate there—the final marr*ai*ge is there?
A. Usually in the endowment house.
Q. In that room?
A. In that room; yes, sir, usually.
Q. Isn't it a fact that no person can be married there except
114 they have before that time received their endowments?
A. Oh, yes, they could.
Q. They can?
A. Yes; marry them anywhere the' chose to.
Q. Do you?
A. No, sir; there would be a difference in that case in the ceremony.
Q. In what case?
A. If they were married before the other ceremony.

Q. Do you marry people there for time and eternity before they have received their endowments?

A. No, sir.

Q. That is a requisite, isn't it? You require that they shall receive their endowments first before they can be sealed?

A. Well, it is a custom; I have performed the ceremony in a variety of places under different circumstances.

Q. But that is the custom at that endowment house?

A. Yes, sir.

Q. Isn't it also a custom at that endowment house that they wear endowment robes at the time of the marraige?

A. Well, I don't know that I would be justified in answering that question.

115 Q. Why, that is a simple question.

A. Yes, a simple question; but I think it is irrelevant what people wear.

By the COURT. You are not to be the judge of what is relevant.

WITNESS. Well, perhaps not.

(Defendant's counsel object to the question, irrelevant and immaterial.)

By Judge VAN ZILE. I do not think it is immaterial when the purpose is disclosed, and I might say here that it might be perhaps that disclosing the purpose might thwart the prosecution. Supposing it should occur that we found certain individuals about there with that very garment on, dressed as a bride * * *

By the COURT. You ask for the question as part of the ceremony of marraige.

By Judge VAN ZILE. Yes; it may be called that, the dress of the individual; there seems to be something in the dress of the individual that is peculiar, and I propose to connect that circumstance before I get through.

(Objection overruled. Def't excepts.)

Question read.

A. It is.

116 Q. Do they also, the ladies, wear upon their head a piece of square cloth, white cloth, that is gathered under here and tied with the corners hanging down?

(Same objection as last noted; same ruling; and defendants except.)

A. I don't remember of there being any square piece of cloth hanging down.

Q. Do they wear some kind of cloth over their heads?

A. They have a head dress.

Q. Well, what is it?

A. It is some kind of a cap.

Q. What kind of a cap?

A. A loose cap; most generally linen or something of that kind.

Q. Is it a cap or a piece of cloth that is square like your handkerchief strung around here and this long corner hanging back?

A. I could not tell how it is made.

Q. Isn't it a square piece of cloth rather than a cap?

A. Not that I am aware of.

Q. You have seen one hundred and fifty or more?

117 A. I have seen a great many of them, but I don't manufacture them. It may have been a square piece of cloth. It is not in the form of a square if it is a cap to fit the head.

Q. Is it a cap—do you call it a cap?

A. Yes, partly a cap; a kind of head dress.

Q. Is not that different from the one that the gentleman wears?
A. Yes.
Q. What is the difference?
A. One is a ladies' cap and the other is a gentleman's.
Q. Well, what is the difference—there need not necessarily be any difference on that account.
A. It appears to me there is a difference between ladies' head gear and gentlemen's.
Q. That is not the head gear that is worn usually by ladies?
A. It is there.
Q. Well, just describe the difference.
A. One is made with a kind of a veil or flowing and the other is not.
Q. The other is more like a baker's cap, isn't it?
A. I don't know what a baker's cap is.
Q. Didn't you ever see a baker's cap?
A. Not that I know of.
118 Q. The other is a square cap without any brim or any forepiece, just set on the head.
A. I don't recognize it by your description. I don't think you have ever been there.
Q. I get what I know from examining witnesses on the stand. What is the description that you give of the gentleman's cap?
A. I don't propose to give the dress of the candidates that pass through the endowment house?
Q. Why?
A. Because I have my reasons for it.
Q. I don't care so much about the cap now, but I will ask you if this endowment robe is a piece of white cloth of some kind that goes over one of the shoulders, comes to the hip, and hangs to the floor?
A. I don't know but I may have seen something of that kind hanging to the floor—sometimes in my experience, but not very often.
Q. Pretty near to the floor?
A. Not necessarily.
Q. Isn't that the custom?
119 A. No, sir.
Q. It is not?
A. No, sir; it is according to the taste of the individual that makes them, about the length.
Q. Does the candidate also wear a green apron at that time?
A. I told you I did not propose to describe the dress worn by candidates.
Q. I understood that, but I ask you the other question, whether a candidate does not wear a green apron?
A. I decline to answer.
By Judge VAN ZILE. I insist upon an answer.
By Judge HAGAN. We think all this is immaterial.
By the COURT. What is the ground upon which you decline to answer the question?
A. I have no right to disclose anything of the kind.
By Judge VAN ZILE. I intend to prove by a witness that Emily Spencer was seen there about the time of this alleged marraige dressed in just this dress as a corroborating circumstance of the admis-
120 sions of the defendant; that she was there dressed as a bride, and that she was there at the sealing room. It is a circumstance we are entitled to, and it seems to me a very strong circumstance.
By the COURT. In that view the answer would be material.

By the WITNESS. There are hundreds of them go there, judge, in that dress that are not married. It would not prove anything.

By the COURT. That is for the court to decide. After the disclosures made by the public prosecutor of how he proposed to connect the answer it becomes material; and so far as any scruples you may have upon the subject, you understand this is a judicial proceeding and you can refuse to answer any question that would have a tendency to convict you of any crime or furnish a link in the chain of evidence that would tend to convict you of any crime; there are no other grounds upon which you can refuse to answer a question which the court has determined
121 is pertinent to the inquiry. No scruples you can have can be available in a court of justice, and with this explanation of course you are called upon to answer the question.

By the WITNESS. Which I decline to do.

By the COURT. The court says you must.

By the WITNESS. That is all right.

By the COURT. Will you or will you not answer the question?

By the WITNESS. I feel myself under obligations not to disclose the dress of the candidates who receive their endowments, and that is what he is trying to get at. There are reasons that are sufficient to me.

By the COURT. But only upon the grounds I have explained can you in law have any reason for not answering. I have explained to you fully, and I desire to have you understand fully, the reasons upon which you may refuse to answer such a question. You understand them, do you?

By the WITNESS. I believe I do.

By the COURT. And you don't place it upon any of those grounds?

122 A. I place it upon the grounds of feeling an obligation not to answer the question.

By the COURT. That ground is not available to you. The court has informed you once or twice that is not a sufficient legal ground for the refusal.

By the WITNESS. Then the consequences will be fine and imprisonment?

By the COURT. Yes.

By the WITNESS. Still I decline to answer.

By the COURT. Very well, the marshall will take charge of Mr. Wells.

By Judge HAGAN. We desire to ask the witness a few questions.

Q. Isn't it a fact that whatever the dress may be, it is the same whether they come there for the purpose of marraige or other purposes?

A. As far as the dress is concerned it is precisely the same. The dress does not indicate necessarily whether they are there for marraige or other purposes. If they were there for marraige they would have the dress, and they would have it also if they were not.

123 By Judge HAGAN. I think the question is immaterial, and object to it on that ground.

By the COURT. Oh, no, the question is material, precisely as if you wanted to prove marraige under the form of some particular church you would have a right to show that the priest or officiating clergyman was there, robed in a particular manner, as a part of the ceremony. That is very often done. You will find cases in the books often where it is done. In view of the object disclosed by the prosecuting attorney the court still thinks the question is material and the witness should answer. If he refuses to answer I shall put him in charge of the marshall. He will be brought before the court to show cause why he should not be punished for contempt. Of course parties cannot with impunity trifle with the

proceedings of a court of justice. That cannot be allowed. There are no conscientious scruples or private reasons that parties may have that can shield them. Counsel understand that very well, and the
124 witness ought to understand it. If not, he will be made to understand it. At such reasonable time as will give him an opportunity if he desires to show cause why he should not be punished for contempt of the court, he will appear before the court.

By Judge HAGAN. How is the defendant to cross-examine him; he is in contempt of court?

By the COURT. The court will waive that, and will not put him under arrest until you proceed. You have perfect liberty to proceed with the cross-examination; the court will rescind the order for that purpose. I rescind the order.

Cross-examined by Judge HAGAN:

Q. Did I understand you to say that you did not remember seeing Miles or Emily Spencer there that day——

By Judge VAN ZILE. I am not through with the direct examination.

Question by Judge VAN ZILE. Does a candidate there for marr*ai*ge wear linen slippers?

A. I believe that is a part of the question I declined to answer, to reveal the dress of parties going through their endowments.

125 By the COURT. He is asking about marr*ai*ge. We have nothing to do with your endowments. He asks you if parties that are entering into the marr*ai*ge relation are dressed in that way?

A. They usually come in with the dress, that they have in receiving their endowments. That is the understanding I have of it. They have the robes, cap, & dress that they have received their endowments in, and that dress I decline to describe. I wish to be understood about what I do decline to answer.

By Judge VAN ZILE. We insist upon an answer.

Cross examined by Judge HAGAN:

Q. Did you see Emily Spencer and John H. Miles there that day that you remember of?

A. Not that I know of. They may have been there. I don't say that they were not there. I don't wish you to understand that.

Q. I am speaking now about your knowledge.

A. No, sir; I don't know.

Redirect:

Q. Did you say that you did not marry Emily Spencer and John Miles?

A. I did not say so.

126 Q. Will you say so?

A. No.

Q. Did you?

A. I don't know. I don't remember of doing it.

Q. Will you swear you did not?

A. No, sir. I married 45 couples that day, and don't know who they were much more than you do.

By the COURT. Do I understand that you insist upon answers to the questions which you have put?

By Judge VAN ZILE. I do, sir.

By the COURT. I understand you to still refuse to answer on the same grounds?

A. I refuse to disclose the endowment dress.

By the COURT. You refuse to answer the questions?

A. Yes, sir; The first question was——

By the COURT. We understand what the question was. The reporter's minutes will show that. Mr. Clerk, you may enter an order upon Mr. Wells that he appear before me—I presume it cannot be attended to before to-morrow morning at ten o'clock. Will that suit you,
127 Mr. Witness? Can you get counsel by that time?

By the WITNESS. I could get here, if it would suit your convenience, earlier than ten.

By the COURT. You may desire to have counsel. I want to know if that time will be sufficient for you?

By the WITNESS. Suit your convenience as to the time, judge.

By the COURT. Mr. Clerk, enter an order, then, that the witness appear before me at ten o'clock to-morrow morning and show cause why he should not be punished for contempt; in the mean time be in the custody of the United States marshall.

Miss CARRIE OWENS called as a witness for the prosecution.

Defendant's counsel object to the witness being sworn as a witness in this case, because from the indictment it appears she is the wife of John H. Miles, and the first marr*ai*ge has not yet been proven. We desire to argue it fairly to the court and present our authorities. She cannot be a witness in the cause as it stands now against the defendant
128 because she is his wife; the first marr*ai*ge has not been proven, and until it is proven the second wife cannot be put upon the stand as a witness.

Objection argued by Judge Tilford for the deft., by Judge Van Zile for the prosecution, and by Judge Hagan for deft.

Adjourned until to-morrow morning at 9.30 o'clock.

MAY , 1879.

By the COURT. At the adjournment of the court there was a question pending as to the competency of a witness on the part of the prosecution on an objection on the part of the defendant to her being sworn. Of course in prosecutions for bigamy there are three facts that are necessary to be established: the first marr*ai*ge, the second marr*ai*ge, and the first wife living and undivorced at the time of the second marr*ai*ge. These are facts to be established by the proof; by evidence to the extent required in criminal prosecutions. Now I am satisfied
129 that an actual marr*ai*ge must be proven. The question is, and the question that has been discussed most in the reports of the cases that have been read is, "What evidence can be used?"—what evidence to establish an actual marr*ai*ge? Of course it is useless for the court to say what might or might not be evidence in certain cases, and will look to the case as it is presented here. An actual marr*ai*ge may be proven of course by persons present, documentary evidence, records where they are required to be kept, and in such shape that they can be evidence, and I am satisfied also that it can be proven by admissions in connection with other circumstances tending to establish it. The question of course, as it has been argued here at the bar, has taken a pretty wide range, and perhaps necessarily so, because there were other points connected with it. But in this case, as admitted by the counsel in their argument, the question stands not upon the competency of evidence that has
130 been introduced, but the sufficiency of the evidence. Now it strikes me that that is a question for the jury to pass upon. By

the law they are made the sole judges of the facts and of the weight of evidence. It is possible that in some other and further stage of the case that the court may be called upon to review the facts, but at present the facts are to be decided by the jury, and they are to determine whether the facts establish an actual marr*ai*ge.

In this case there are confessions and admissions and other circumstantial evidence going to show that fact—confessions or admissions, or whatever you call them, with proof of other circumstances tending that way; and it is not for the court to say. Whether th econfessions or admissions are strong or weak, or whether the circumstances are strong or weak, is for the jury to pass upon, and the court must not usurp the province of the jury. And it seems to me that whether the proof be by persons
131 present and seeing the marr*ai*ge, or be by admissions coupled with other circumstances tending to show it, the question is whether it produces in the minds of the jury that degree of conviction required in criminal cases to satisfy them that the parties were actually married, and if it does, it is proof of an actual marr*ai*ge. Of course the precise question before the court is as to the competency of the witness Owen; and the court overrules your objection and allows the witness to be sworn, and you can take your exception.

Defendant's counsel except to the ruling of the court.

Miss CAROLINE OWENS sworn for the prosecution.

By Judge HAGAN. Let the record show the same objection renewed after the witness is sworn as before.

Same ruling, and defendant excepts to the ruling of the court.

Q. Do you know this defendant, John Miles?

A. Yes.

Q. When did you first come to the Territory of Utah?

132 A. I landed here on the 4th of October.

Q. When did you first get acquainted with John Miles?

A. About 10 or 12 years ago.

Q. Where?

A. London.

Q. Did you live near him at that time?

A. Well, about two miles away.

Q. Did you attend school together?

A. No.

Q. Were you well acquainted with him?

A. Yes, sir.

Q. How much of an acquaintance did you have at that time?

A. Well, it lasted from that time until he went to sea, about 1870, I guess.

Q. How old are you?

A. 23.

Q. You were then about 13 years old?

A. Yes.

Q. Is he older or younger than you?

A. Older.

Q. How much older?

A. 13 months, I think.

Q. You say that acquaintance lasted with him until he went to sea?

A. Yes.

133 Q. About how long was that?

A. He went to sea in 1870, as far as I can remember.

Q. About 8 years ago?

A. Yes.
Q. Did you live in England at that time?
A. Until he went—yes.
Q. What part of England?
A. London.
Q. He lived in London?
A. Yes.
Q. Did you live in London then?
A. Yes.
Q. Your parents lived in London, did they?
A. Yes.
Q. I wish you would state whether at that time there was a very intimate acquaintance, and if was such an acquaintance that an engagement of marraige was entered into or talked of when you would get old enough?
A. Yes, I was considered engaged to him; I was. He asked me if I would wait for him. After he went to sea he wrote to me and asked me if I would be his wife and if I would wait for him until he came home. I wrote and told him yes.
134 Q. Was that before he came to the Territory of Utah?
A. Yes.
Q. Will you state to the jury what occurred from that time?
A. The Mormons, I believe, found him in Australia.
Q. What about his going to sea—he went to sea, did he?
A. Yes; he was apprenticed as a midshipman for three years, and nearly at the expiration of that time he met with these Mormons in Australia and came with them to Utah.
Q. What became of the ship—did you hear any news?
A. No; I heard no news, except that it was wrecked, and I supposed that he was drowned.
Q. Did you hear from him after the ship was wrecked—until he came here, I mean?
A. No.
Q. You supposed that he was lost with the ship?
A. Yes.
Q. And for how many years intervening was there that you supposed he was lost at sea?
135 A. About three years.
Q. It was about three years you supposed he was lost with the ship?
A. Yes.
Q. Did you hear that all on board were lost?
A. Yes.
Q. When did you next hear from him?
A. When he came back as a Mormon elder to England.
Q. He came there as an elder or missionary?
A. Yes.
Q. You may state if your acquaintance was renewed.
A. Yes; he came and found me out and told me that he was a Mormon missionary. After a while he told me that he was engaged to two young ladies in St. George, Utah. He afterwards told me that the oldest one caused her mother to ask him to have her. She used to do washing for him, or something of that kind, I believe, and she caused her mother to ask him to have her. Then when he asked her, according to her mother's wish, she said her sister loved him too; so he asked

136 these two girls. He was in England about 2 years. About 6 months before he thought of coming back he said that he would write to these girls and tell them that he was going to bring me over; that he would give them up.

Q. What then?

A. That he would marry me. He said in fact he thought Emily Spencer would never stand it, his bringing me over, and said he would give up fifty such women for my sake, and a lot more humbug.

Q. Then the arrangement was that he was to take you for his wife and give up these other girls?

A. Yes.

Q. Was there any expectation on your part then that there was to be any plural marraige?

A. As the time got nearer of our coming away he talked about it more, that there might be such a thing. As he made more sure of bringing me out, so he spoke of these girls more. He said he would go to John Taylor and have the thing settled, but certainly I should be his first wife.

137 Q. Why didn't he marry you in England.

A. He said he could not; that he was a Mormon missionary, and must be married in the endowment house.

Q. Was that the only reason?

A. He said he could not marry while on a mission.

Q. Why?

A. Well, the head people of the church over there would not allow it.

Q. It would be against the rules of the church?

A. Yes.

Q. Did you consent on those terms?

A. Yes; I consented to come over and have John Taylor settle it, but fully expecting that I should be his first wife.

Q. You came over with other converts, I suppose?

A. Yes.

Q. Do you recollect about how many came with you?

A. I think about 600.

Q. Do you recollect when you landed here in Salt Lake?

A. The 4th of October.

Q. Who were you living with in England?

A. My aunt.

138 Q. What business had you been doing or engaged in?

A. I had been a governess.

Q. In your aunt's family?

A. No; in the school where I had been a pupil.

Q. What do you mean—a teacher?

A. Yes.

Q. What school was that?

A. I had taught in an English school and one in Holland.

Q. 2 schools?

A. Yes.

Q. Had you graduated from this school yourself?

A. Yes.

Q. Previous to that time?

A. Yes.

Q. What day did you say you landed in Salt Lake City?

A. The 4th of October.

Q. Now you may go on and state where you went when you landed.

A. To Angus Cannon's.

Q. How long did you remain there before this marriage that has been spoken of in the Endowment House?

A. Three weeks to the day.

139 Q. In the mean time had you got acquainted with Katey Connelly?

A. Yes.

Q. Where did you meet Katey?

A. I first met her at her brother's house.

Q. Was there any intimate acquaintance, or otherwise, grew up between you and Katey?

A. Well, I saw her about three times before the wedding reception. I wanted her to come, but Miles objected, but I wanted to and had her.

Q. You recollect this occasion that Miss Katey has told us about, that occurred at her house? What occurred at her brother's house at the evening visit, if you remember?

A. Yes; I remember. The marriage was talked about.

Q. Who was present there?

A. Connely, his wife and children, and Katey, Miles' stepmother, and myself. That is all, I think.

Q. Won't you state what occurred there? What talk was had there?

A. I told them that I had been to John Taylor, but I was dissatisfied.

Q. Had you been to John Taylor?

A. I believe I had then.

Q. Had you been to John Taylor?

140 A. Yes, sir; I am not positive whether I had been then, because just a little while back Miles had been there, and whether Miles had been and told me what John Taylor had said, or whether I had been there myself, I am not positive about, but it was one or the other.

Q. And you stated you were dissatisfied?

A. Yes.

Q. Go on and tell us what conversation there was.

A. Miles pretended to go to sleep, pretending he did not hear it, but he heard it all, and was awful mad because his step-mother put a piece of candy in his mouth, and he was awful mad over it.

Q. What was the plan that was talked over there? What was settled upon?

A. That Emily Spencer, being the oldest, was to be the first, I second, and Julia third.

Q. That was the arrangement that was made, was it?

A. Yes.

Q. Before going to the endowment house was that the settled arrangement between you and Miles and the Spencer girls?

141 A. Yes.

Q. Did you go to John Taylor's with Miles?

A. Yes.

Q. State what occurred there.

A. I asked him if what Miles had told me was true, that Emily Spencer must be first, and he said I went once by myself, that was the day before, and I talked it over with him, and he said I better come to-morrow with Miles and Emily and Julia Spencer, and I went the next day with them, and he said that there was an order in the church that the oldest must be first. I have my reasons why I wished to be first, because he had promised me and these different things which I have related.

Q. Go on and tell me what you told John Taylor—your reasons.

A. Because he tried to wrong me in New York, and I thought he ought to make me reparation by making me his first wife.

Q. Did you tell him of your prior engagement while young?

A. Yes; that he said he would make me his first wife. John
142 Taylor said that was not sufficient; it must go by age. There was an order in the church, and it must be so; that it must be according to age. I asked him, "Are we at liberty to give him up or he give us up?" He said "Yes; but if you are married at all it must be in the order that I have stated."

Q. Did you talk with Miles about it?

A. Yes; he said he would not give them up. I talked with him and with Emily Spencer. Emily Spencer said she could wait ten years for him; was determined to have him any way, and Julia felt to do as the Lord's servants told her. I did not exactly. I wanted him to give them up, but he would not.

Q. Did you undertake then to have Miles make you his first wife?

A. Yes; I tried to make him.

Q. What was his answer when you would undertake to have him make you his first wife?

A. He said he could not. He must obey counsel, and the counsel was that he must take them in the order named.

Q. And he refused to marry you for the first wife?

143 A. Yes.

Q. Now, was that the finally settled arrangement that he would obey counsel, and for Emily to be the first wife?

A. Yes; and I fully understood that when I went to the Endowment House that Emily Spencer was to be first, I second, and Julia third.

Q. Now, after the endowment house marriages—after you had been to the endowment house—state whether or not there was a reception at Angus Cannon's?

A. Yes.

Q. Will you state now what occurred at that reception—how did that reception come about and what occurred?

A. I wanted a reception first of all, and it was spoken about that it should take place in the 14th Ward School-house, but he was afraid "The Tribune" would get hold of the affair and make a disturbance—afraid he would be found out, and thought it better to be quiet and have it take place in Angus Cannon's house.

144 Q. Who invited Katey Connelly?

A. I did.

Q. Did you know at that time that Katey Connelley was not a Mormon?

A. Yes.

Q. You invited Katey Connelley and had a reception?

A. Yes.

Q. What occurred at the reception?

A. When I went down stairs I found Emily Spencer and Julia there and Dora Woodruff and several people. Emily was sitting on the stool.

Q. Is Dora Woodruff the lady who has been called Dora Young in the case?

A. Yes; she is now Dora Young, I believe.

Q. Well, proceed.

A. Some one asked me to play, and Emily Spencer was sitting on the music stool. I asked her to get up, asked her civilly. She turned up her nose at me and didn't try to. Previously to that, coming out of the endowment house, at the corner, John Miles said to me—we met Lucy

B. Young, he invited her—turned round and said, "I have invited Emily Spencer to come to-night and she is coming." I said, "Whatever
145 you do I don't care. If you give a reception to ourselves don't have her come where I am." He said he would not do it. He said, "I will have you know first as last that she is as much my wife as you are." I said, "If she comes I will take an oath I will strike her or in some way insult her." When she would not get off the music stool I slapped her.

Q. Do you recollect what language you used before you hit her in the face?

A. Yes. "I said I would do it and I will," that is, referring to the oath I had taken. Miles came across the room—previously to my slapping her Miles said, "Emily, my wife, sit still, don't you mind that woman," and it so annoyed me that I slapped her. I told him if he did not go off I would slap him too, but Cannon caught my hands behind me and I could not.

Q. What next occurred?

A. We went in to the supper. I took the head of the table, although I did not know that I had a right to.

Q. What remark did you make about it, if any?

146 A. I said I did not know that I had a right to take the head of the table.

Q. Why?

A. Because I was not his first wife.

Q. Did you make that remark?

A. Yes; and he did not deny it.

Q. Go on.

A. I took the head of the table, and then after that they wanted to dance a quadrille. It was formed, and there was one more couple wanting. He was going to take his wife Emily and I refused to play for them. I said if she was going to dance I was not going to play for her. I introduced a young lady to him. He said if he could not dance with his wife Emily he would not dance with any one. He refused to dance with her, and I refused to play and went away.

Q. Went away where?

A. Into the dining room.

Q. What next?

A. Soon after that I went away altogether. I left them enjoying themselves. I did not enjoy myself much.

Q. When did you first learn, if you learned at all, that he actually had married Emily Spencer?

147 A. I saw her in the endowment house.

Q. I know, but was there anything said when you went from the endowment house down to Cannon's that night about his having married Emily?

A. Well, he called her his wife at the reception. When he came to my room at night he locked the door and said he would make sure of me, he was sure of Emily Spencer.

Q. You got away, you state, from the reception?

A. Yes.

Q. What happened when you came away? Go on and state.

A. When I left the reception?

Q. Yes. Just state what occurred in chronological order from there.

A. I don't exactly understand the question, Judge Van Zile.

Q. What is the next thing that happened? You say you left the house.

A. Yes; I left the house. That was in the early part of the evening. They came and coaxed me back.

Q. Was that before this occurred that you have testified about?

148 A. Yes, that was before. After I had slapped Emily Spencer, and before the supper. I left the house. I went up the street.

Q. You say they came and brought you back. Who came and brought you back.

A. Miles and Geo. Cannon, and took me to the house, and said it was wrong for me to make a disturbance; that I must go in.

Q. Did you leave the house again that evening?

A. Yes, I went out again, I think.

Q. At what time?

A. That was supposed to be half past nine I went out.

Q. Where did you go then?

A. I went down by the side of the house and walked up and down, and Minnie Cannon, Angus Cannon's daughter, was with me. We walked up and down a little, then went back into the house again.

Q. Now, were you there when Miles went away that evening from the house?

A. No, I was not in the room.

Q. Where did you go after the reception was over?

A. You mean the next day?

Q. No. A long time after where did you go?

A. St. George.

149 Q. With whom?

A. Miles.

Q. Now, if you have had any talk with him about the marriage to Emily Spencer, will you state to the jury what it was and when it was?

A. After that time he was repeatedly calling her his wife Emily, and saying that after this trial was over—he was quite sure they could not convict him—he should go free and he intended to marry Julia Spencer, for she was anxiously waiting to enjoy the rights and privileges of being married to him. One day he said, "I have never admitted to you before that Emily Spencer is my first wife; you are only my second, and you can go and tell those damned lawyers in Salt Lake City. You can do your best or your worst, but there is no witness about to hear what I am telling you." He was repeatedly telling me she was his first wife whenever I saw him.

Q. In what spirit was that said?

A. Tauntingly.

Q. Emily was his first wife, and that you were but second?

150 A. Yes; I was only the second.

Q. Did you live with him in St. George?

A. No, I never lived with him in St. George, I believe. I know that he lived at man's, named Jarvises. Emily Spencer was in St. George. I never saw her. She was hiding during the day-time, but I have good reason to believe that Miles was living with her.

Q. She was in St. George at the time?

A. Yes, she was in St. George.

Defendant's counsel ask to have the answer stricken out as to what she had good reason to believe. Stricken out.

By the COURT. Do not state what you believe; state the facts and let the jury find what you have a right to believe.

Q. You say you saw Emily Spencer in the endowment house?

A. Yes.

Q. Was Miles there at that time?

A. Yes.

Q. In what sort of dress was Emily Spencer when you saw her in the endowment house?

A. She had a robe, cap, apron, mocassins on—regular endowment house dress.

Q. She had a robe, cap, apron and mocassins on?

A. Yes.

151 Q. What kind of a robe?

A. A full linen robe, gathered at the shoulder and goes straight across.

Q. Describe that more minutely, what that robe consisted of.

A. It consisted of a piece of linen; it is a long piece of linen and doubled over.

Q. About how wide was it?

A. About 2 yards wide, and gathered over on the centre here—gathered here and gathered round the waist, tied with a string and comes down to your feet. Then there is a sash you put around and tie at your left side, a linen sash, and there is a square piece of muslin you wear on your head—three corners to it, one corner is rounded, that is put on the head and pinned up here and turned back. And at a certain part of the ceremony that three-cornered affair is put over your face.

Q. Describe the apron.

A. Nine fig leaves of green silk.

Q. That is, representing fig leaves?

A. Yes.

Q. And the moccasins?

A. Made of linen. The defendant has taken my robes and

152 things away that I could not show them to any of the Gentiles.

Q. You had those in your possession at one time?

A. Yes. He stole them from me at St. George.

Q. Is this rigging that you have testified about—this regalia, whatever you have testified about—is that the clothing or the regalia that is worn by the bride at the marraige?

A. Yes.

Q. You saw Emily Spencer, then, in the endowment house with them on?

A. Yes.

Q. In what room?

A. In the room that you go through the vail; next the sealing room.

Q. In the room next the sealing room?

A. Yes.

Q. What time was that you saw her there?

A. Thursday, the 24th of October.

Q What time in the day?

A. About three o'clock in the afternoon.

Q. And was that the day, or was it not, that was fixed upon which the plural marraige was to take place?

A. Yes; it was.

153 Q. Upon which he was to marry Emily Spencer and you?

A. Yes.

Q. It was the same day which was agreed upon?

A. Yes; the same day.

Q. Do you know whether Miss Emily had taken her endowments?

A. She had already taken them at St. George.

Q. Now, as it was explained to you, is it necessary for a woman who

has taken her endowments to go through the endowment house before they can be married?

A. No.

Q. If they have had their endowments they only have to go through the sealing room?

A. Yes; and get married.

Q. Had you had your endowments?

A. No.

Q. Did you take your endowments that day?

A. Yes.

Q. At what time did you commence in the morning?

A. About nine o'clock.

Q. Well, after taking your endowments what did you do—do
154 after you came up to the vail and passed the vail; then what did you do?

A. Miles took me by the hand and set me down. I sat down, so did he, before a table, at which Joseph Smith was writing. He had a book in which he recorded all the names of those that were to be married, and from that book he wrote the names on slips of paper, and those slips of paper were taken in to the man who was officiating. Daniel Wells married me. He tore them up, but there is certainly a record of marr*aig*es kept.

Q. You say Miles took you by the hand, sat you down, this writing was done; then what did you do, and what did Miles do?

A. He gave his name and I gave my name. After that Jos. Smith gave him a slip of paper. He went into the sealing room.

Q. Who did you find in the sealing room?

A. Daniel Wells and some old man, and Dora Young came in.

Q. Have you been able to find the name of that old man?

155 A. No. I should know him if I should see him, though.

Q. Were you married there to Miles?

A. Daniel Wells, as we knelt down to the altar, said, "Where is your first wife?"

Q. Said so to whom?

A. To Miles. He said, "It is her privilege to give this woman to you, and you know it." I half got up from the altar and resented it, and Miles said, "Never mind." Wells said, "Well, you know it is her privilege; she has a right to give this woman to you." And he muttered over half a dozen words and we were married.

Q. Then, when you got up from the altar, did you go out of the sealing room immediately?

A. Went out into the room where Joseph Smith was sitting. Emily Spencer was waiting there—waiting there to be called to give me to him.

Q. She was there in the room, and had on these marriage garments?

A. Yes.

Q. Did you go immediately from the endowment house with Miles?

156 A. I went with him from the endowment house to Cannon's.

Q. Then you were in Miles' company during the marriage ceremony and all the time after the marriage ceremony until you came back to Angus Cannon's?

A. Yes. It was previously arranged that he should go home with me, so that it should not create any suspicion—would not be seen walking down the street with two or three women. It was arranged 2 or 3

days beforehand. He told me while at St. George that he married Emily Spencer in the morning and married me in the afternoon.

Q. Did Miles go back to the endowment house after your marriage?

A. No.

Q. Went with you to Angus Cannon's?

A. Yes.

Q. And after that to the reception?

A. Yes.

Q. About what time was it you left the endowment house?

A. About half past three.

Q. If there is anything I have omitted, will you please state it to the jury?

157 A. I don't know that there is, Judge Van Zile.

Q. I desire to ask you as I shall other witnesses whether or not those who go into that endowment house are sworn never to reveal anything that is done or seen there?

A. Yes, they do.

Q. That oath is administered, is it?

A. Yes.

Q. Of what church were you a member before you came here?

A. Episcopal.

Q. This endowment house is in Salt Lake City?

A. Yes.

By Judge VAN ZILE. I suppose there is no question but it is in Salt Lake City and county, Territory of Utah?

By Judge HAGAN. No.

Cross-examination by Judge HAGAN:

Q. When did you say you arrived in Salt Lake City?

A. On the 4th of October.

Q. With whom?

A. John Miles, his stepmother, half-brothers and a company of emigrants.

Q. Where did you go to?

158 A. Angus Cannon's.

Q. How long did you remain there?

A. Do you mean before I was married?

Q. I ask you how long you remained at Cannon's house?

A. Three weeks before I was married and after I went back to the man Miles until some time in December.

Q. Did you remain at Cannon's house continuously after the time you married Miles?

Yes.

Q. How long after you married Miles before you left Angus Cannon's?

A. I left the next day to go to Marshall Shaughnessy's next evening.

Q. Where did you go to?

A. Marshall Shaughnessy's.

Q. Who went with you?

A. No one.

Q. You went alone?

A. Yes.

Q. How long did you remain there?

A. A week.

Q. Where did you go to?

A. I went back to the man Miles.
Q. Where did you find him?
A. I found him in American Fork. I went after him because he had stolen my things.
159 Q. Robbed you?
A. Yes.
Q. Did you find him?
A. Yes, I found him.
Q. Were you angry when you found him?
A. I don't know that I was.
Q. Were you in a very good humor?
A. I don't know that I was.
Q. Didn't you come back to this town with him?
A. Yes.
Q. Did you ride around with him?
A. I rode around once on that Sunday morning.
Q. Didn't you remain with him?
A. Yes, until we went to St. George?
Q. Didn't you sleep with him?
A. I don't know—not all the time.
Q. Don't you know whether you did or not?
A. Possibly. He wanted to sleep with me.
Q. Didn't he sleep with you?
A. Yes; when he wanted to.
Q. This man that robbed you—you went for him and came home?
A. Came home.
Q. Went for him when he stole your clothes?
160 A. Yes.
Q. Came back to town with him next day?
A. Yes.
Q. Lived with him as a wife?
A. I was not his wife.
Q. Didn't you live with him as a wife?
A. No, sir; as a mistress.
Q. As a mistress, then?
A. Yes.
Q. What day did you get back from American Fork with this man Miles?
A. Sunday morning.
Q. What time did you find him?
A. Saturday evening.
Q. What was the reason you went for him?
A. Because he had stolen my clothes, and I wanted to know where there were.
Q. Did you find them?
A. No; I have not got them all yet. Angus Cannon received some of them after they were stolen.
Q. Found him on Saturday evening?
A. Yes.
Q. Came back with him on Sunday?
A. Yes.
Q. Where did you go to?
161 A. Angus Cannon's.
Q. Both of you went there?
A. Yes.
Q. Remained there together?

A. Yes.
Q. How long at that time did you remain at Angus Cannon's?
A. Till I went away to St. George.
Q. How long?
A. I guess you can reckon up. I staid a week at Marshall Shaughnessy's.
By the COURT. He means after you came back from American Fork?
A. Until the time we went to St. George. I went away in December again. I can't remember the exact date—the beginning of December, I think.
Q. Went to St. George?
A. Yes.
Q. Who did you go with?
A. Miles.
Q. How long did you remain at St. George.
A. About three months.
Q. What was the understanding between you and Miles when you left England?
A. That he was to make me his first wife.
Q. Then there had been some conversation between you and
162 Miles about some one's being a plural wife, had there?
A. Well, he had talked about those girls and talked about them more just before coming away—that this thing must be settled by John Taylor—that he did not think Emily Spencer would stand it, but probably John Taylor might say she would be the second wife.
Q. Then it was explained to you in England?
A. It was explained, but he said he would give them up.
Q. The position was explained to you in England that he was engaged to these two girls.
A. He told me he was engaged to those two girls—that is just what I say.
Q. Before you came here?
A. Yes.
Q. Before you left your country?
A. Yes.
Q. And he promised he would give them up if John Taylor should so advise him?
A. No, he did not; he promised he would give them up at all hazards—at all risks—but wanted to——
Q. Didn't you say so—that John Taylor would advise him?
163 A. He didn't say he would accept his counsel. He said he believed Emily Spencer would back out.
Q. What did he say about Julia?
A. Whatever Emily did Julia would do, too.
Q. What did he say about it?
A. He said that she would give him up, too.
Q. Julia also?
A. Yes.
Q. And that you would be his wife?
A. Yes.
Q. That you would be his first wife?
A. Yes.
Q. What did he mean by saying you would be his first wife if he intended to give them up?
A. I should be his first wife if he should marry these other two women; that I should be his wife, for he should give them up.

Q. There was an understanding, then, that he might marry them in polygamy. Didn't you say that the understanding was that he was to give them up entirely?

A. He promised me to do so.

164 Q. Then what was the use of talking to you about being his first wife?

A. I told you once how it was.

Q. Tell me again.

A. I told you that he said if Emily Spencer still kept to him I should be his first wife, and that he would make her second—would not think of making me second, but it was probable they would back out, then then I should be his wife.

Q. Then there was an understanding before you left England?

A. These things had been talked over.

Q. That John Miles would probably go into polygamy?

A. Probably would.

Q. There was an understanding of that kind before you left England?

A. Well, yes.

Q. Was there or was there not?

A. It might be so.

Q. Was it or was it not so, that you and him talked over the possibility of going into polygamy?

A. I have told you that the thing was talked over.

165 Q. Before you left England?

A. Yes.

Q. Who were at Mr. Connelly's house when that conversation took place there—in the conversation you have related?

A. He and his wife and children, Miles, his stepmother, brothers, myself, and Katey.

Q. Katey who?

A. Katey Connelley.

Q. Who did you go there with?

A. Miles and his tribe.

Q. His who?

A. His tribe—his family.

Q. How much of a tribe did he have?

A. He had five.

Q. Who were they?

A. His mother and three boys and a girl.

Q. Did you go with him?

A. Yes.

Q. Were you one of the tribe?

A. I was one of the tribe.

Q. How long did you remain there?

A. I think we went about 7 o'clock in the evening, and came away somewhere about 11.

Q. Now repeat the conversation that occurred there concerning your marriage.

A. As far as I can.

166 Q. Certainly, I don't want you to repeat it any further.

A. I am not sure whether I had been to John Taylor, or if I was only repeating to her what Miles had said after being to see John Taylor, that Emily must be first, I second, and Julia third.

Q. Was Miles present then?

A. Yes; he was pretending to be asleep.

Q. Was he asleep or not?
A. No, he was not.
Q. How do you know?
A. Because his mother put a stick of candy in his mouth, and he snapped her up like everything.
Q. Did he bite the candy?
A. Yes.
Q. What did Miles say?
A. He said, as he said all along, that he must obey counsel.
Q. Was that all he said?
A. As far as I remember.
Q. As far as you remember now, that was all that Miles said?
A. He generally used to say——
Q. I am talking about this conversation now.
167 A. Yes, I know.
Q. Now, on this occasion, was that all he said?
A. It may have been. It may be that he said he would not give u——
Q. I don't ask for what he may have said. What do you remember?
A. I remember what I told you.
Q. And no more?
A. Of course there would be more said, but I could not remember it.
Q. You would not try to repeat anything more than he said?
A. Do you take me for a liar? I am not in the habit of telling stories, Judge Hagan.
Q. I did not say you were. I wanted to see if you remembered anything more. I asked you to relate what you knew, and no more.
A. I have told you.
Q. That was all Miles said, was it?
A. As far as I remember.
Q. You will not attempt to relate anything further of that conversation than what you have told, because you don't remember?
168 A. I have sworn to tell the truth, and I am not going to tell anything more.
Q. Didn't he put his arm round you on that occasion?
A. He very often did.
Q. Did he on that occasion?
A. I don't remember.
Q. Isn't it a fact that he put his arm around you, and you became very indignant on that occasion?
A. Became indignant with me?
Q. No; you became indignant with him?
A. Yes.
Q. Do you remember that?
A. Yes.
Q. And what was said on that occasión?
A. I told him I would not be his second wife. I held out until the last.
Q. I am speaking now about this occasion, when he put his arm around you?
A. I know. I told him I would not be his second wife. I rather think I had not been to John Taylor then, and I said I would go to him and see for myself.
169 Q. Then you are mistaken, you think, about having gone to John Taylor prior to that?

(Objected to by Judge Van Zile, because it is assuming something that has not been sworn to.)

By the COURT. The witness stated she could not tell whether this visit to Connelly's was before or after she had gone to John Taylor's.

Q. Then, prior to this interview, you had not been to see John Taylor?

A. I have said I do not remember clearly whether I had been or not.

Q. Then what did you mean in your conversation by saying that John Taylor had told you so & so?

A. I did not say John Taylor had told me so & so. The defendant had told me when he went that John Taylor had said it must be so. I told him I would go & hear for myself.

Q. You could hear for yourself?

A. Go and hear for myself what John Taylor had to say.

Q. Then you did not go to see John Taylor before this conversation at Connelley's?

A. I am not sure.

170 Q. What was said at the time he put his arm around you and you became indignant?

A. I don't remember. That is all I remember.

Q. What was his reply to you when you said that?

A. I believe it was that he must obey counsel and do as John Taylor had said.

Q. Did you say anything about going to see John Taylor?

A. Yes, sir—I don't remember.

Q. Didn't you use language like this at that time—when he put his arm around you didn't you withdraw and say, "I will marry you, but I will either poison or kill you afterwards"?

A. I may have done. I don't remember.

Q. You don't remember whether you said so or not?

A. No, sir.

Q. Did you say something of that kind?

A. I don't remember.

Q. How is your memory, good or bad?

171 A. Pretty good for some things, especially when people ill-treat me.

Q. In other things it is not so good?

A. In some things good and some bad.

Q. This you don't remember?

A. It is very likely I may have said it.

Q. Do you remember using that language to him?

A. Yes; I have used it, but I don't think it was on that occasion.

Q. On what occasion do you remember to have used it?

A. I don't remember on what occasion, but I know I have said that to him.

Q. You say Emily Spencer had taken her endowments at St. George?

A. Yes.

Q. How do you know?

A. Miles had told me repeatedly.

Q. Emily Spencer had?

A. Emily Spencer had told me, and one day when she undressed in Cannon's house she had these garments on that they receive, and she would not have them on if she had not, for they are not allowed to wear them until they have. She told me she had received her endowments in St. George, in the temple.

172 Q. That is the source of your knowledge?

A. Yes, because she told me she had done so.

Q. Did she tell you on that day?

A. Oh, no; she told me previously to that.

Q. That she had taken her endowments at St. George?

By Judge HAGAN. We ask that the answer of the witness to the question awhile ago, volunteering the remark herself that Emily Spencer hac taken her endowments, be stricken out.

(Objected to by Judge Van Zile. Motion overruled. Defendants except.)

Q. When was the first time that you heard from Miles any admission that he had married Emily Spencer?

A. Directly after coming out of the endowment house.

Q. It was after you left the endowment house on that occasion?

A. Yes.

Q. How long after you left the endowment house?

A. It was about, I suppose, half past three.

Q. That was before the wedding feast, was it?

A. Yes.

173 Q. To whom was this wedding party given?

A. For me, I believe.

Q. Prepared for you?

A. Yes; and for those other two as well.

Q. Then it was prepared for all three of you?

A. Yes.

Q. By whom—Mr. Cannon?

A. Yes.

Q. At whose request?

A. Miles, I believe.

Q. Didn't you make any request?

A. I said I would like to have a reception, but Miles asked Mr. Cannon about it.

Q. Did you want to have a reception for yourself and the other two or for yourself alone?

A. Myself alone.

Q. Didn't you speak for the reception for yourself alone?

A. Yes; I spoke I would like a reception, and I didn't want Emily Spencer to come to it.

Q. You would like to have a reception of your own?

A. Yes.

Q. Did not want Emily Spencer to come to it?

174 A. No.

Q. Didn't you ask Mr. Cannon to prepare you one?

A. I did not ask Mr. Cannon anything about it.

Q. Didn't you ask Mr. Connelley to assist you in preparing one?

A. I spoke to him about it afterwards. He made the wedding cake; but it was Miles who spoke to him first and had to do with it chiefly.

Q. Did you not ask Miss Conelley to come to your reception?

A. Yes.

Q. Didn't you ask Mr. Connelley to come there and cook—prepare some of the cake and pastry?

A. No.

Q. You did not?

A. I did not.

Q. When was the first time you had any intimation from any one that Miles had married Emily Spencer?

A. From Kate Connelley, I believe.

Q. Where was that?

A. In the room she said to me, "That fellow has been introducing that Emily Spencer as his wife. Mrs. Miles, I am glad you were not here to hear it, for I am sure you would have got angry." I did not hear it.

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Q. Was that the first intimation you had that he had actually married her?

A. No, sir; it was not the first intimation, because on coming out of the endowment house he said, "I will have you to understand"——

Q. Now when was the first time you had any intimation from any one—the first time?

A. I had it from him.

Q. From Mr. Miles?

A. Yes.

Q. That was the first intimation you had that he had married Emily?

A. Yes.

Q. Where was that—just outside the endowment house?

A. Yes.

Q. After you had married him?

A. Yes.

Q. What was your reply to him?

A. I would have to first tell you what he said. He said he would have me know she was coming, because he would have me know she was as much his wife as I was. I said I didn't want her to come.

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Q. What did he reply to that?

A. He said she should come.

Q. How long did this conversation last?

A. Oh, about five minutes, I suppose.

Q. In the mean time you were walking on to Cannon's?

A. No; we stood by the corner.

Q. Where did he go to?

A. Went down to Cannon's.

Q. You were on your way, then, were you not?

A. Yes.

Q. When was the next intimation you had of any marriage with Emily Spencer?

A. At the reception, when he called her his wife.

Q. What was it?

A. By Katie Connelley. Katie came & told me he had been introducing her as his wife all around the room.

Q. Was that the next intimation you had?

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A. No. He called her his wife when I told her to get off the stool. Then it was after that Katie Connelley told me.

Q. He called her his wife; and what did you say then?

A. He said, "Emily, you are my wife; don't you mind that woman; sit right there;" and I slapped her face, and I told him I would slap him.

Q. Was that the occasion upon which you slapped her face?

A. Yes.

Q. What did you say when you slapped her face on this occasion?

A. I said, "I said I would do it & I will."

Q. And you did do it?

A. Yes.

Q. Did you slap anybody else?

A. No; I didn't get a chance.

Q. Did you try to?
A. Yes.
Q. Who?
A. Miles.
Q. You remember the time that Miles was arrested and under examination before Commissioner Sprague?
A. Yes.
178 Q. During that examination, do you remember you were in town?
A. Yes.
Q. Do you remember, during that examination, to have gone to the house of John Connelley and ask him if he knew whether you were the first or second wife; that you did not, at that time, know yourself?
A. No, sir; no; that is a lie.
Q. What was a lie? I asked you if you did it?
A. No, I did not.
Q. What did you mean by saying it is a lie?
A. What you state there.
Q. I asked you the question if you did it?
A. No; I didn't do it.
Q. Didn't you furthermore ask him if he knew whether Emily Spencer was married to Miles or not?
A. No.
Q. And was his first or second wife?
A. No.
Q. That he told you that he knew nothing about it?
A. No.
Q. You didn't do it?
A. No.
179 Q. Is that your handwriting?
A. Yes, it is my handwriting, and I can tell you——
Q. Just at the present time I want to identify it. You will get a chance to tell all about it. Is this your signature?
A. Yes.
Q. Are these interlineations that are there yours?
A. Where?
Q. Anywhere there. Do you swear to that?
A. Yes.
Q. What time in the evening at the wedding-party was it that you slapped Emily Spencer?
A. I think about 7 o'clock.
Q. What time in the evening was it that Kate Connelley came to you and told you she was being introduced as Miles' wife?
A. A few minutes after.
Q. Did Kate Connelley see this occurrence at the piano?
A. I believe she did.
Q. A few minutes after she came to you and told you she was
180 being introduced as Miles' wife?
A. Yes.
Q. What did Emily Spencer do when you slapped her?
A. Sat there.
Q. Sat there still?
A. Yes.
Q. Did she say anything back to you?
A. No.
Q. Just remained on the stool?

A. Yes.
Q. Where did you go when you left that piano?
A. I went out into the street.
Q. Who went with you?
A. I went by myself.
Q. How long did you remain out there?
A. I suppose about ten minutes.
Q. Where did you go then?
A. After coming in from the street?
Q. Yes.
A. Into the house, then in to supper.
Q. How long after you came into the house before you went to supper?

A. Not very long; I could not say the exact time.

181 Q. Who was with you from the time you re-entered the house until you went to supper?

A. Miles came and brought me back to the house—Miles and Geo. Cannon.
Q. Came out and brought you back?
A. Yes.
Q. Who remained with you principally up to supper?
A. I believe I went around the room. I don't know that I staid with any one particular.
Q. Moved around among the guests?
A. Yes.
Q. No more slapping done there?
A. No; not that night.
Q. Who took you to supper?
A. Miles.
Q. Who else went with you and Miles; any one else?
A. Emily Spencer.
Q. Well, what occurred at the table?
A. I said, before sitting down, I did not think it was my place to take the head of the table, because I was not his first wife, but I should do it, and I did it.

Q. How came you to make that remark?

182 A. Because I knew from what he had said, and what I had understood how it was to be, that I was only the second wife.

Q. Did anybody else make any remarks when you sat down at the table?
A. I believe Cannon said something about that he did not get a supper when he was married, because he didn't know where the money was coming from, and could not afford it.
Q. Did he say anything else?
A. He said the Misses Miles would have to be called by different names.
Q. That was before you commenced eating?
A. No; during the time.
Q. How long did this supper last?
A. I don't know; I suppose about half an hour, or three-quarters.
Q. What was done after supper at this wedding?
A. Went back into the room and played and sung.

Q. Things became merrier then more than they were before?

183 A. Not very much merrier.

Q. They sung, you say; who sung?

A. Miles wanted to sing; wanted to show his talent.

Q. Did he show his talent?
A. He tried to.
Q. Did he make a failure of it?
A. Yes.
Q. Did you sing to show your talent?
A. No; I played for him to sing.
Q. Emily Spencer played no more?
A. She can't play.
Q. So she did not play, then?
A. No.
Q. Emily Spencer remained there after supper?
A. Yes.
Q. How long?
A. Till she went away.
Q. How long was that?
A. Well, I was going to tell you—until Miles took her away at night; I was not in the room when he walked her off. I was not there when he took her away.
Q. Then you don't know when she went away.
A. I heard it; they went out.

184 Q. Where did you go when you went away from the room?
A. I went to Sarah Cannon's house; that is, his first wife's.
Q. How far was that from this house?
A. I don't know about the distance; I know it is down a lane not very far.
Q. Near by?
A. Yes.
Q. What did you do; did you remain there all night?
A. Yes.
Q. Who took you there?
A. I went there by myself.
Q. No one went with you?
A. No.
Q. How long after you got there before Miles came?
A. I went away about half past nine; I suppose it was between one and two in the morning when he came; I don't know.
Q. Don't you know what time he came?
A. No; I did not keep any account of the time.
Q. You don't know, then, what time he came to the place where you were?

185 A. No; I don't know exactly.
Q. Where were you when he came to the house?
A. In bed.
Q. Did he come to your bed-room?
A. Yes, he did.
Q. Did he remain all night?
A. Yes.
Q. Who had selected that bed for you, if anybody?
A. It was proposed that after I was married I should go to Sarah Cannon's and stay; I suppose she selected the bed.
Q. Didn't you help to prepare it?
A. No.
Q. Didn't you furnish any of the bed-clothing on it?
A. Yes; my own.
Q. Then you knew you were going to remain there.

A. I guess so; but after the disturbance I never thought he would have the impudence to come where I was.

Q. You did not think he would have the impudence to come?

A. No.

Q. Still, he had the impudence to come?

186 A. Yes.

Q. Did you object when he came?

A. Yes; I did.

Q. How much?

A. Well, I don't know; I don't know the amount of objection. I told him I did not want him there, and told him to go to his other women. He said he was going to make sure of me. He was sure of Emily Spencer. He said he was my husband, and a lot more humbug.

Q. Is that all the objections you raised?

A. No; I raised a lot more, but I cannot remember them all. I can remember these.

Q. Did you object to his remaining there in bed?

A. Yes; but it was no use.

Q. What did he do?

A. I wish you had been there, Mr. Hagan, to se'.

Q. I wish I had, too. When would you I had rather been there—before Miles or afterwards?

(Objected to by district attorney as insulting and impertinent; objection sustained.)

187 Q. What objections did you make to his remaining there with you as a husband?

A. I made all the objections I could.

Q. I did not ask you if you made all the objections you could.

A. That is my answer.

Q. You have no other answer as to what you did?

A. I told him he could go to his other women.

Q. You have answered that once; was that all you said?

A. I was not the stronger of the two, else I would have put him out of the room. That is the only effectual objection I could make.

Q. Did you oppose his remaining there, I ask you?

A. Yes, I did; until he talked me over.

Q. Then you consented, did you, to his remaining?

A. I suppose so.

Q. And thereupon he remained with you?

A. Yes.

Q. Now we will go back to the time you went to Marshall Shaughnessy's house; what did you go there for?

188 A. Because I had no other friends in Salt Lake.

Q. How long did you say you remained there?

A. A week.

Q. When did you leave and what time of the day did you leave there?

A. Early in the morning.

Q. Did you let his family know when you went to leave?

A. I told the servants.

Q. Did you notify the family that you intended to leave that house?

A. No; I did not.

Q. Had he not been protecting you as a gentleman and an officer?

A. Yes; he had.

Q. You left the house early in the morning?

A. Yes.

Q. Without notifying him?
A. Yes.
Q. Where did you go?
A. I went to Cannon's house.
Q. How long did you remain there?
A. Until half past three, I think, in the afternoon—half past three or four.
Q. Who did you meet there at Cannon's house?
189 A. His family and a cousin of Mrs. Cannon's that was up from American Fork.
Q. What explanation did you give him or his family of your coming there?
A. I told him, after the trial was over, Miles had promised to come down to Marshall Shaughnessy's the next day, and not having come, I wanted to know the reason why, and how things were going to be, because I could not stay at the marshall's all the time. Cannon told me what Miles had done, that he had ransacked my boxes and taken more than half the things away. I afterwards found they were hidden in Angus Cannon's house. I asked where he had gone. He said he had not the slightest idea; he would be sure not to go south. I thought he lied to me, and I went that afternoon down to American Fork, and there I found him coming in there. I saw him out of the window coming into American Fork.
Q. Who was with him?
A. No one.
190 Q. You got off the train and met him?
A. Yes.
Q. Where did you go then?
A. To Mr. Paxman's house.
Q. Did you go with him there?
A. I went with him there.
Q. Did you stay all night there?
A. I staid by myself all night.
Q. Did you stay all night there?
A. Yes.
Q. Then where did you go?
A. Back to the city next morning.
Q. Who with?
A. Miles.
Q. Were you indignant with him during this time or pleasant towards him?
A. Well, I might have pretended to be pleasant towards him, but I did not feel like it.
Q. Didn't you kiss him on board of the train coming up?
A. No; I did not.
Q. And put your arms around him in public?
A. No, sir.
Q. On board the up train?
191 A. No, sir; I did not.
Q. Were you not laughing and talking with him all the way up?
A. I was talking with him, but I was not laughing.
Q. Where did you go when you got to town?
A. Angus Cannon's.
Q. Did you remain there with him?
A. I remained in Sarah Cannon's house and he remained in the other wife's house.

Q. Did you go out riding with him that day?
A. Yes, that day; because he wanted to show me around the town to show that I had gone back to him.
Q. Did you go with him riding?
A. Yes.
Q. How often?
A. Once.
Q. How long did you remain at Cannon's?
A. About a month afterwards or five weeks.
Q. Where were you when you wrote the letter to the Salt Lake Herald?
A. At Angus Cannon's.
Q. Angus Cannon's house?
192 A. Yes.
Q. Who was with you at American Fork when you met Miles?
A. This cousin of Mrs. Cannon's; she went back with me.
Q. What was her name?
A. I don't remember her name.
Q. Robinson, was that the name?
A. Yes; I think so.
Q. Did she go down to American Fork with you?
A. Yes.
Q. Was with you when you met Miles?
A. Yes.
Q. Came back with you?
A. No.
Q. Where did she live?
A. She went home. She lived some two or three miles, I believe, out of American Fork.
Q. You know the contents of this document without reading it?
A. Yes, I do.
Q. It is in your handwriting?
A. Yes.
Q. Do you need to read it over to refresh your memory now, or do you know what is in it?
193 A. I guess I know there is a good many lies in it.
Q. I am not asking you that, I am asking you if you know what is in the document or do you want to read it over?
A. I believe I will read it over.
Q. Read it over. I don't want any remarks about it, only what I ask you, at present.
(Document marked by the court for identification.)
Q. You have read the contents of it, have you?
A. Yes.
Q. Now, after your examination of this, is it as it was when it left your hands?
A. Yes.
Q. Referring again to the fact that when you went to Cannon's the night of the wedding, after the wedding did you not send for John Miles to come there?
A. No, sir; I did not.
Q. Didn't you tell Mrs. Cannon to send for him—that you
194 wanted him; did you tell Mrs. Cannon or any one else to send for John Miles, that you wanted to see him?
A. No. I did not.
Q. His visit there, then, was something you did or did not expect that night; did you or did you not expect him?

A. I should have expected it if it had not been for that disturbance, but I naturally thought he would go home with his first wife.

By Juror SCRIMGEOUR. Did you see Smith, who was on the stand yesterday?

A. Yes.

Q. Is that the same Smith you saw in the endowment house?

A. Yes.

Q. Writing on the record book?

A. Yes.

Prosecution rests.

Recess.

Miss CARRIE OWEN recalled for further cross-examination.

Examined by Judge HAGAN:

Q. You were sworn before the commissioner on the examination of this case, were you not?

195 A. Yes.

Q. Do you remember what you swore to on that occasion?

A. I don't remember all.

Q. Did you swear to the same facts that you have sworn to here to-day?

A. I don't understand you. Could I swear to the same facts?

Q. Did you swear to the same facts?

By the COURT. What he means is, was your testimony there the same as it has been here to-day?

A. I guess so.

Q. Did you testify there as to whether Miles had notified you that he had married Emily Spencer or not?

A. I cannot exactly remember, but the thing was fresher in my mind then than it is now. I told the truth then and think I am doing so now.

Q. What you told then would naturally be fresher than the facts you state now, would it not?

A. It might.

Q. What is your impression about it?

A. I guess I should.

Q. Did you testify before the commissioner that when you saw

196 mily Spencer at three o'clock she was putting on her dress?

A. I believe I did.

Q. That after the ceremony was performed you went downstairs and the defendant staid behind?

A. I think so.

Q. Is that the fact?

A. I think so.

Q. Then he came down and you went to Cannon's together?

A. Yes; that is a fact.

Q. What dress was it that Emily was putting on at the time?

A. I believe she was putting on her ordinary dress.

Q. The dress she usually wore, was it?

A. I think so.

Q. Did you not say in that testimony that you did not notice what garments she took off?

A. I may have said so; I don't know.

Q. How is that as a matter of fact—when she put on this ordinary dress do you know what dress she took off?

A. I saw her standing before she changed her dress in her

197 endowment-house robes, and she would naturally change them.

Q. Then you saw her before this time dressed in the endowment house, did you?

A. Yes; she was waiting in the room outside the sealing room.

Q. Did you state that fact before the commissioner?

A. I might not have been asked the question.

Q. Do you remember of stating anything of that kind before the commissioner?

A. Stating anything of what kind?

Q. That you saw her more than once there, once changing her dress and once before?

A. I may have said so and I may not. I can't remember.

Q. Didn't you say in your examination before the commissioner that you never heard John Miles at the party introduce Emily as his wife?

A. I did not hear him introduce her.

Q. Did you say that before the commissioner?

198 By Judge VAN ZILE. I think it is not pertinent at this stage of the case, as the witness has already sworn she did not hear him. The question that is asked does not contradict the witness and therefore it is not pertinent. No one pretends that she did. We object to it.

(Objection sustained.)

Q. You say that your names were recorded in a book—put down in a book by Joseph F. Smith, if I understood you properly?

A. Yes, sir.

Q. And slips were handed to you?

A. A slip of paper was handed John Miles.

A. Any handed to you?

A. No.

Q. Did you see the names on the book?

A. I saw him writing them down, yes.

Q. By what name were you married to John H. Miles?

A. Caroline Owen Maile.

Q. Did you give them that name?

A. Yes.

Q. Who asked you for the name?

A. Joseph Smith.

199 Q. Is that your name?

A. That was my father's name, Maile.

Q. Caroline Owen Maile; did you have a slip of paper containing that?

A. I did not; John Miles had, together with his own name. The two names were on that slip of paper.

Q. What was the other name?

A. His own—John Horne Miles.

Q. Who did you say married you?

A. Daniel Wells.

Q. Were those names handed to him?

A. Yes.

Q. As you understood?

A. Yes.

Q. What is John's middle name?

A. Horne.

Redirect:

Q. Won't you explain how it is you go by the name of Caroline Owen?

A. My aunt and uncle adopted me, and I had to take their name, but when I was baptized into the Mormon Church, they said it was right to take my father's name.

Q. When you were adopted, you adopted the name of your aunt and uncle?

200 A. Yes.

Q. And when baptized, you took your father's name?

A. Yes.

Recross examination:

Q. Did you say your father was dead?

A. Yes.

By JUROR:

Q. Did you speak to Emily Spencer at any time in the endowment house that day?

A. No.

Q. Nor she to you?

A. No.

By Judge HAGAN. First we offer in evidence a letter directed to the editors of the Salt Lake Herald, dated Nov. 4th, 1878, the same one your honor marked as being in the handwriting of Miss Carrie Owen. Read to jury, as follows, to wit:

SALT LAKE CITY,
Utah, U. S. A., Nov. 4th, 1878.

To the Editor of the Salt Lake Herald:

DEAR SIR: In the interests of justice, I trust you will allow the
201 following communication a space in the columns of your widespread and valuable paper. Several articles have appeared in the Tribune lately, in which I am accused of saying and doing things that my faith as a Latter-day Saint would neither allow me to say nor do. In an article which appeared in that paper some few days ago, headed "Sanctified Rape," I am accused of having said "I was a very poor Mormon before I entered that place (referring to the endowment house) but after going through the indecent mummeries of Adam and Eve I found that all Mormonism had left me." Permit a deeply slandered woman to deny most emphatically ever having uttered such sentiments.

It was also stated that I was dragged back to Mr. Cannon's on the evening of the reception at his house. Permit me to deny that also. I was requested to return, and I did so.

In another article in the same paper headed "Ladies and Jus-
202 tice," it was stated that I had been decoyed from my home in London, brought here, rushed through an unnatural ceremony with two other women, taken to the house of Angus M. Cannon, and there cruelly outraged in the name of religion. Permit me to deny these statements also as being totally untrue.

The facts of the case are briefly these: In the exercise of my agency and of my own free will and choice, I joined the Church of Jesus Christ of Latter-day Saints in the autumn of 1876, came here some few weeks ago, because I believed in the divinity of what the world call Mormonism, & on Thursday, October 24th, I was married in the endowment house to the defendant in the "Miles polygamy case." Before being married I was asked the question whether I took part in the ceremony of my own free will and choice, to which I gave my unqualified assent.

In justice to Mr. Cannon in whose house I have staid, and also to
203 my husband it is incumbent upon me to state that neither of them, although they have been accused of doing so, have at any time restrained me of my liberty, or treated me in any other way than I should be treated as a responsible being.

Public opinion having manifested itself in a most marked manner against me, I would like, in order that I may explain myself to my real friends, to deny under oath that during the whole course of the trial I have ever spoken deridingly of the sacred ordinances of the holy house of God. I have been tempted to do so, to renounce my faith, to leave my husband, and to say and do things which I never had either inclination or intention to do. Some of the proposals which have been made to me since I left my husband are unfit to detail to the public, and had I submitted to them would have placed me not only beyond the pale of forgiveness from the authorities of the church to which I belong,
204 and from my husband, but they would have placed me in such a position that I should have despaired of receiving forgiveness from Almighty God.

In justice to the United States marshal, Mr. Shaughnessy, and his wife, with whom I staid a few days, I must state that they treated me very kindly and respectfully. In justice to the authorities of the church and to my husband, permit me to state that no coercion of any kind has at any time been brought to bear upon me, but on the contrary I have been treated with the utmost kindness and consideration. My motives for acting as I have done, are these: While in England I was made acquainted by my husband with the nature of the complications which had arisen in his private affairs, and I was always afraid that he would at some future time take another wife. Seeing the two Misses Spencer at Mr. Cannon's house on the evening of my marriage, I was afraid
205 during the day that he had married them, & I said and did things which I am sorry for, and which were misconstrued (by pretended friends whose names I will furnish if called upon) into a wish on my part to be alienated from my brethren and my sisters and my husband.

I have since come to the conclusion that individuals who strive to separate a woman from her God, her religion, her husband and her true friends are enemies of the worst kind. My husband has never informed me that he has another wife, and outside my own suspicion, I have no knowledge that he has one. I have heard him most emphatically deny that he married the girls of whom I was jealous.

In an account of an interview that is said to have taken place a day or two ago, I am made to state things that I never said, and which are entirely untrue; and the few items which I did furnish in answer to in-
206 cessant importunities from different people at different times and places; and also the facts from my own evidence in the case have been so mixed up with base falsehoods that it impossible for any one but myself to distinguish between truth on the one hand and falsehood on the other. It is equally impossible for any one but myself to distinguish between items that I furnished myself, or highly seasoned and specially prepared paragraphs, the result of the too fertile brain of the voracious (?) reporter who is said to have interviewed me. I was requested to write a history of my life and to furnish the editor of the Tribune with the facts of the case, (I presume for sensational purposes). Feeling sorry for the unenviable notoriety that the case had created for my husband and myself, I refused to do as I was asked. I was then worried for days by several people, and I was finally threatened
207 that if I did not furnish these facts and items they would publish a statement for me, which was finally done, against my consent and with my more than unqualified disapproval.

It was also stated in Sunday morning's issue of the same paper that I had been kidnapped on Saturday to prevent my appearing before the

grand jury. The facts are I did not know the whereabouts of my husband, and believing he was in American Fork, I went there to look for him, returning with him on Sunday morning. I am deeply sorry that my suspicions should have induced me to have taken a course whereby I have brought upon my brethren and sisters, my husband & myself, unmerited odium and my only desire in writing this is to acquaint the public with the facts of the case and leave them to judge for themselves concerning the issue.

In closing this communication, it would be well for me to state that it was my own proposal to write this and have it published, and that
208 no person, directly or indirectly, has either coaxed, threatened or influenced me to do so.

Apologizing for this lengthy communication, and trusting, as I said before, that in the interests of justice you will insert this, believe me to remain,

Yours most respectfully,

CAROLINE OWEN MILES.

The above statement was sworn to and subscribed by Caroline Owen Miles before me, this 4th day of November, 1878, at my office, Salt Lake City, U. T.

[SEAL.]

CHAS. W. STAYNER,
Notary Public, Salt Lake County, U. T.

By the COURT. If you will stop one moment, there is another matter which may properly be attended to at this time. Mr. Wells, will you step forward. I want to simply remark to you and give you a little history of the case. You are aware that yesterday, while you
209 were upon the witness-stand a question or two questions were asked you. An objection was made to those questions upon the part of the counsel for the prisoner who was being tried at the time, that the questions were irrelevant and improper; that objection was overruled by the court and an exception was entered on the part of the defendant, so that his rights were seen to and preserved. You were required to answer the questions, and refused. The court then stated to you upon what grounds you could legally refuse to answer the question, and you did not place it upon those grounds, and still refused to answer the question. The court deemed you in contempt, and of course could have fined you then, and punished you for the contempt then; but deeming it proper that it should be done deliberately and calmly, and to impress upon you the fact that it was with the court and not with any person that you were dealing; that it was an offense against
210 the court, the court did not desire to proceed vindictively or hastily; but to maintain its dignity an order was entered against you to appear this morning and show cause why you should not be punished for contempt, and that has been postponed until this hour. You now have the privilege of purging yourself from that contempt by answering the two questions.

By the WITNESS. I don't know that I can answer it satisfactorily; but I can try, if I have an opportunity.

Question read.

Q. "Does the candidate also wear a green apron at that time?"

A. At what time?

By Judge VAN ZILE. At the time of the marraige.

Q. WITNESS. Shall I say a word?

By the COURT. No, sir; I want you to answer the question.

WITNESS. I have performed those sealings.

By the COURT. Answer the question.

WITNESS. I have performed those sealings at various times and places, as I said yesterday, without the dress.

211 By Judge VAN ZILE. I wanted an answer to the question—yes or no.

A. At all times I should say no, speaking of the dress, not of the apron particularly.

Q. The question is about the apron; the question is confined exclusively to the apron at this time.

A. At the time when the sealing is performed; I have done that at the bedside of the dying when they had no apron or dress.

Q. Well, if it is to evade the question, I will shape it differently. I want to know if it is usual in the endowment house for the candidate when married to wear a green apron?

(Objected to by counsel for defendant, as the witness comes here to purge himself of the contempt, and we object to any further question.)

By the COURT. Of course he is back upon the stand as a witness to purge himself of the contempt. If the answer needs an explanation, it must necessarily be given.

212 By Judge HAGAN. Has not the defendant some rights in the presence of the jury? We can object to this contempt going on while this trial is going on. The court has the power; but if it is going to open up other questions, I do not think the court ought to do it. I am not the attorney for Mr. Wells; that is understood; but I am one of the attorneys for the defendant. Now, he has come here to purge himself, and it is a matter between Mr. Wells and the court.

By the COURT. Yes, and in the effort to do that he gives an answer that is evasive.

By the COURT. This is evidence in the case.

(Defendant's counsel objects to his being asked any questions at all, because the prosecution has closed it' case without calling this up.

Objection overruled.

Defendan' excepts to the ruling of the court.)

By the COURT. I understand that he is on the stand as a witness, both to purge himself from contempt and as a witness.

213 By Judge HAGAN. And that additional questions may be asked?

By the COURT. Yes, if it necessary to explain his answers.

By Judge HAGAN. Then, the court stops our case for the defense to introduce a witness for the prosecution?

By the COURT. The facts appear upon the records just as they actually occurred; there is no dispute about them, and whatever is the result of them will be shown.

By Judge HAGAN. We except to the ruling of the court.

By the COURT. The record will show the fact. The reporter will take every word that is said, and there will be no trouble about making up the record.

Question read.

A. In answer to the question as it is, I suppose I have the privilege to purge myself and say the reason why I decline to answer?

By the COURT. Yes, you can state the reason why.

214 A. I declined to answer that question yesterday and do to-day, for this reason: No person can do it, being under the obligations that we are under, without perjuring themselves, at least in a moral sense, which I don't propose to do. No person can reveal the ordinances

and the things which they receive under those circumstances without falsifying their covenants.

By Judge VAN ZILE. You claim to be under sworn obligations not to reveal those things?

A. I said, morally, yes as sacred to me as anything in a court of justice.

Q. Do I understand you to say that you are under sworn obligations not to reveal them?

A. I did not say so.

Q. What is your obligation?

A. I said under a sacred obligation. * * *

By Judge HAGAN. It is agreed that without reading the notes of the testimony of Miss Owen before the commissioner, that we shall be at liberty to refer to it.

215 By Judge VAN ZILE. I want to have the privilege of calling Col. Sprague on that question, to show that he does not take down everything. If anything is to be done with it I shall have to call Col. Sprague in the case.

By Judge VAN ZILE. It is understood that that is a fact, that there was not everything written down, but whatever was written was said.

By Judge HAGAN. Everything that was material was written. We would rather have Judge Sprague say so on the stand.

CHARLES W. STAYNER sworn for the defendant.

Q. What position did you hold on the 4th day of November, 1878?

A. Notary public, in addition to being practicing attorney.

Q. Is that your handwriting—the signature and jurat to that?

A. Yes; that is mine.

Q. Did any person bring that document to you and sign it before you in your presence?

A. Yes, sir.

216 Q. There seems to be two signatures to it; that is, the signature twice.

A. The signature in pencil was made before the document was presented. The lady asked me to swear her to the document; I then passed my pen through the pencil signature and asked her to write it in ink, which she did, and then I swore her to the document.

Q. Who came there with her?

A. Mr. Miles, I believe.

Q. What did she say to you about the document?

A. She requested me to read the document, and asked me if I would use my influence to have it published in the Salt Lake Herald.

Q. What did you tell her?

A. I read it over, and after she had signed it and sworn to it I said I would step into the Herald office & inquire if they would publish it. I did so, and returned & informed her they would, at which she expressed her satisfaction, thanked me, and left.

Cross-examined:

Q. Who did you say was with the lady?

217 A. Mr. Miles.

Q. Who was the lady?

A. Well, he introduced her as his wife. I understood her to be Miss Carrie Owen or Carrie Owen Maile. He introduced her as his wife and said she had a document she wished me to swear her to—she had the document in her possession.

Q. Did Miles request you to swear her to the document?
A. No, sir. He said she had a document she wished me to swear her to.
Q. Did he say anything about desiring you to swear her to it?
A. Not that I remember.
Q. Did he say anything about wanting that document published?
A. Yes; he said that she wished me to do something with the document, and referred me to her, and said she had a document; then she attended to the business.
Q. He wished you to have something done with document?
A. He said she had a document that she wished me to have
218 something done with. I understood it was to be sworn to or something of that kind.
Q. And asked you about publishing it?
A. I think the entire remarks in regard to publication were made by her.
Q. Didn't Mr. Miles request that?
A. That I am not positive about. I could not swear he did not say anything about it, but the main conversation was between me and her.
Q. He was the gentleman that introduced the conversation?
A. Yes.
Q. He said she had a document that she wanted you to swear her to; is that correct?
A. He said this was his wife, Mrs. Miles, and that she had a document, and that she wished me to look it all over.
Q. He had not presented the document at that time?
A. No, sir.
Q. What else did he say before she presented the document?
219 A. I don't remember of his saying anything else. I think she immediately produced the document.
Q. Did he say she desired to swear to it?
A. Well, he may have said so.
Q. Didn't he say so?
A. I am not positive about that.
Q. What is your impression?
A. My impression is that she stated—that she alone said—that she wished to swear to the document, but he might have said that she had a document she wished to swear to.
Q. What makes you say he might have said it?
A. From the fact that they came in together and simultaneously spoke. After he introduced her she produced the document immediately, and the thing was done in a very short space of time.
Q. Are you certain that he did not speak to you about having it published?
A. Well, I don't remember that he did.
Q. Can you say that he did not?
A. I think he did not.
220 Q. Did he not introduce that subject of publication himself; say that she desired it to be published?
A. No; it was herself. She asked me if I would use my influence to have it published.
Q. Did you know they were coming to your office?
A. No, sir.
Q. Did you know Miles?
A. I had barely seen him once.
Q. Did you ever speak to him before that?

A. No, I think not; never spoke to him. I had seen him on the street, and had him pointed out to me.

Q. Are you a Mormon?

A. Yes.

Q. In polygamy?

A. No, sir.

Q. You believe polygamy to be right; do you not believe in it?

(Objected to as immaterial and irrelevant. Question withdrawn.)

Redirect:

Q. When you came back and told her that she could get it
221 printed, what did she say and do to express her feelings about it?

A. She clasped her hands together as though she was intensely interested in the result, and she said, "Oh, I am so thankful," and thanked me several times for the interest I had taken in requesting the publication of it.

JOHN CONNELLEY sworn for the defendant.

Examined by Judge HAGAN:

Q. What is your name?

A. John Connelley.

Q. Are you any relation of Miss Kate Connelley?

A. Her brother.

Q. Do you know Carrie Owen?

A. Yes, sir.

Q. Were you acquainted with her during the examination of the Miles case before Commissioner Sprague?

A. Yes.

Q. Did she come to your house at any time during that examination or not?

A. Yes, sir; during the examination.

222 Q. How can you fix it as during the examination?

A. Because it was previous to my sister being subpœnaed as a witness.

Q. How long previous?

A. I guess it was a day, or it might be two days. I know it was a day, anyway.

Q. About that time?

A. Yes, sir.

Q. What, if anything, did Miss Carrie say to you on that occasion about whether she was the first or second wife?

(Objected to, as no foundation has been laid for it. Objection overruled.)

Q. State, sir, if she said anything to you during that visit as to her being the first or second wife; and, if so, what was it?

A. She said, "Brother Connelley, do you know whether I am the first or second wife?" I told her I knew nothing at all about it. She said she was very anxious to know.

Q. Were you present at an interview at your house about a week before the reception at Cannon's?

223 A. Yes.

Q. Between Carrie Owen—I believe your sister was there—yourself and wife, and Miles and Miles' stepmother?

A. Yes, and two or three children.

Q. Did you hear what was said on that occasion about her marrying?

A. I never heard nothing in relation to the marriage save that——

Q. What was done there?

A. Well, we had supper, and after supper we sat down and was talking of things, and remarked that they didn't expect me to be home so soon from England. I told them I did not expect—talking about a great many other things. During the conversation, I believe Mr. Miles went asleep and Miss Owen said she was going to be married shortly, I believe, and invited me down to the wedding, I and my sister and wife.

Q. Where did she say she was going to have her reception?

A. At Mr. Cannon's house.

Q. What else occurred there?

224 A. One part of the evening Mr. Miles was putting his arm around Miss Owen's waist, and she told him to "Go away, you brute," and he said that he had a right, or some such word as that, to do so, as they were going to be married. She said "If you come near me I will strike you." He persisted in so doing, and she said "I will murder you—I will poison you—I will marry you to have my revenge." She then struck him on the face. It was quite a hard blow, and he went out to the door. When he came in again, probably two or three minutes afterwards, he looked to me as if he had been crying.

Q. Now what was said, if anything, about the order of marr*ai*ges?

A. There was nothing said about any order of marr*ai*ges that I know of, save that Miss Owen was to be married to Mr. John Miles.

Q. Did you go to the wedding reception?

A. Yes.

Q. Who did you go there with?

A. With my sister.

225 Q. Who did you meet when you went to the house?

A. There was some there I didn't know, and some I did. I don't think Mr. Cannon was in that room. He was in the house, but he was not in the room at that time, if I remember rightly.

Q. Who did you meet when you went in there?

A. I think Mr. John Miles I met, and there were some strangers there, but I don't know their names. I don't remember them, not having seen them before, and not having seen them since.

Q. Were you introduced to Emily Spencer that evening?

A. Yes, sir.

Q. By whom?

A. By Mr. John Miles.

Q. By what name?

A. Miss Emily Spencer, Sister Emily Spencer rather.

Q. Did you hear her introduced there as his wife?

A. No, sir.

Q. What time did you leave there?

226 A. I left there—they all went away I think—I don't remember the time—it might be about half-past eleven.

Q. Did you hear your sister introduced to them?

A. My sister was introduced to them, but I don't remember any names. Of course I was introduced and I sat right down; she was introduced right around.

Q. You did not hear it?

A. I did not hear any names mentioned that I remember of. I don't think I did.

Q. Were you at the supper table?

A. Yes, sir.

Q. What time was the supper had?

A. Now, I could not remember the time. It might probably be about half-past eight o'clock.

Q. Did you hear Angus Cannon make any remarks there?

A. I think I did hear him make a remark at the table. It was something to this purport: he said he would like to see every one comfortable and happy, and we all should be thankful to have a supper,
227 because he was glad when he had his marriage suppers; some words to that effect. I don't know that those were the exact words, but that was the spirit of it.

Q. Did you hear him make any further remarks?

A. No, sir; I didn't hear him make any further remarks that I know of. They were all talking and joking.

Q. How far were you sitting from the head of the table?

A. I was sitting near the bottom, I think, sir.

Q. And how long was the table?

A. I think it was about the length of the room, but I don't remember. Probably it might be about 14 feet long and about 8 or 10 wide. The tables were sitting the long way of the room. I think I was sitting near the bottom; I think next my sister.

Cross-examined by Judge VAN ZILE:

Q. How long have you lived in this country?

A. About 9 years.

228 Q. Your sister does not live here, does she—this is not her home?

A. No, sir; not her home.

Q. How long had she been stopping at your house at this time?

A. I was in England when she came here—probably it might be in July or August. I could not remember the month.

Q. Only been here a few months, as you understood it—she was here on a visit from the East?

A. No, sir; she came there to make a home there.

Q. She had formerly lived in the East?

A. Yes, sir.

Q. In Rhode Island?

A. Yes.

Q. I suppose you had not seen her for a long time?

A. I had not seen her for about 8 years.

Q. You had been to England?

A. Yes.

Q. On a mission?

A. Yes.

A. From the Mormon Church?

A. Yes.

229 Q. Now you think you heard all that took place at this interview?

A. Which interview?

Q. At the interview prior to the reception?

A. Yes, sir; I heard every word that was said—that was said in the ordinary tone.

Q. There was nothing said there about Emily Spencer at all, I suppose?

A. Not that I heard of.

Q. You would have heard it, wouldn't you?

A. Yes.

Q. Her name was not mentioned?

A. No, sir.
Q. Nothing said about having been to John Taylor's office?
A. No, sir; not at all, sir.
Q. Not a word?
A. Not a word.
Q. John Taylor's name was not mentioned?
A. No, sir.
Q. Nothing said about having to obey orders?
A. No, sir.
Q. Nothing of that kind was said?
230 A. Nothing at all.
Q. You say Miss Owens came to you during the examination here trying, to find out whether she was first or second wife?
A. Yes, sir.
Q. What did you have to do with it—how could you know the facts—did you understand there was any more marr*ai*ges?
A. No, sir.
Q. You never had heard of any more marr*ai*ges?
A. Never heard, except from her and my sister.
Q. From whom?
A. Miss Owen and my sister.
Q. Did your sister tell you about it before that?
A. My sister told me.
Q. You were very much surprised, were you not?
A. Yes, sir.
Q. When you heard there had been more than one marr*ai*ge?
A. Yes.
Q. I suppose you had heard Miss Owen had been married?
231 A. I had heard she was going to be married, and I suppose she was married.
Q. You heard so, didn't you?
A. I heard she was going to be married, and I supposed she was married; but I don't remember of any special one telling me.
Q. Wasn't there anything said about it there, at the reception?
A. Yes.
Q. Then you heard of it there?
A. I heard of it there.
Q. Was anything said about any other marr*ai*ge that night of the reception?
A. Not that I remember of.
Q. Wouldn't you remember it if it was said?
A. Yes, sir, I should; if it was said.
Q. What makes you say not that you remember of, if you know?
A. I say so because I don't remember of it.
Q. You say that there was no other marr*ai*ges spoken of there then?
A. No, sir.
232 Q. Did you see Emily Spencer there on a music stool that night?
A. Yes, sir.
Q. Did you hear any controversy about it between Miss Emily and Miss Owen?
A. I heard Miss Owen say she wished certain guests that were in the house expelled because she had not invited them; that that was her marr*ai*ge feast, and she did not wish these people to be present.
Q. Did she say anything about his calling this lady on the stool his wife?
A. No, sir; I never heard her say so.

Q. Did you hear her say, "If she is your wife who am I?"
A. I never heard that word.
Q. There was no such expression as that used there, was there?
A. No.
Q. You know, of course, Miss Katey Connelley, very well?
A. I guess I do, sir.
Q. Have you not taken a great deal of interest in this case?
A. Which case?
Q. In this case?
233 A. No, sir; I have not taken any more interest, I guess, than anybody else.
Q. Have you not taken interest in it from the very time the arrest was made?
A. Yes, sir; one kind of interest.
Q. What kind of interest?
A. Just like anybody else would in a case like this—naturally read the papers.
Q. Have you not taken more interest than you do in any other case?
A. I don't know that I have, except that I was specially interested in it—nothing else.
Q. Are you specially interested in it?
A. Nothing only what any other is.
Q. Haven't you undertaken to shape the testimony of Katey Connelley?
A. No, sir.
Q. Haven't you told Katey Connelley, since she was called in this case, not to testify, for she didn't know anything about it?
A. No, sir.
Q. When she was called and subpœna'd before the commissioner?
234 A. No, sir; I did not.
Q. Didn't you tell Katey Connelley that if she went before the commissioner and testified she never need to come to your house again?
No answer.
Q. Did you say so to Katey Connelley?
A. I wish to make an explanation.
Q. Did you say to Katey Connelley, or give her to understand, at least, that if she went before Commissioner Sprague to testify in that case she need never come to your house again?
A. I don't know that those were the words that I used.
Q. Was not that the substance of it?
A. No; I don't think it was.
Q. Isn't it a fact that Katey Connelley has been refused to come to your house?
A. No, sir.
Q. Is it not a fact that she never came back since she went to
235 testify before Commissioner Sprague? Didn't you turn your sister out of doors because she testified before Commissioner Sprague?
A. No, sir; I did not.
Q. Didn't you give her to understand she need not come back to your house—she could have no more a more a home there if she testified in this case?
A. I told her if she would go there and tell lies my home would be no longer hers.
Q. She packed up her trunk before she left?
A. It was left locked up in her room.

Q. After she had gone?
A. After she had gone.
Q. You say after she had gone you found her trunk locked?
A. I suppose it was locked; it was in her room. She sent a man there to get it away; she sent a note to my wife, and my wife packed up all her things and delivered them to him.
Q. She has never been back since?
A. No, sir.
236 Q. And it was because she testified before Commissioner Sprague.
A. I didn't tell her to do that. I did not tell her to go away; she went away of her own free will.
Q. You say you told her that if she went before Commissioner Sprague and told lies she need never come back?
A. Those are the words.
Q. Did she tell any lies before Commissioner Sprague?
A. I think she did.
Q. You think she told lies in this court?
A. I think she did.
Q. You are somewhat interested in the case, were you not, to do that with your sister?
A. I was interested when she took that course.
Q. When you told her that she had not testified?
A. I thought it was a disgrace for a sister of mine to tell lies in a public court to gain notoriety.
Q. How did you know she was going to tell lies?
237 A. I told her if she was summoned here to tell the truth.
Q. Did she say she would say anything but the truth?
A. She never said anything to me about it.
Q. Why did you tell her that?
A. Because I supposed she would do so.
Q. Why?
A. Because she had expressed herself to me bitterly about Mr. Miles.
Q. Did she express herself bitterly about Miles?
A. She told me if she was in Miss Owen's place she would kill him or poison him.
Q. It didn't make any impression on your mind, did it?
A. Yes.
Q. And so you told her if she went and told any lies she could not come back to your house?
A. Yes; and not coming back. I supposed she told some.
Q. Have you seen your sister since she came back?
A. I believe once; she was standing in the street when I came
238 past. She went away and did not come back.
Q. You could have spoken to her?
A. I did not have any desire to do so.
Q. So far as Katie Connelley is concerned, you have turned her out and disowned her.
A. I have done this much: She went away herself; she knows the place, and if she wishes to come back our home is there.
Q. She can come back now, if she has told lies?
A. If she has told lies.
Q. Did you tell her if she told lies she could not come back?
A. I think a little brotherly and sisterly feeling would fix things.
Q. You have some brotherly feeling left?
A. I have got a little, I think.

Q. Don't you think your interest in this matter warps your testimony somewhat?

A. No, sir; it does not.

Q. Now, sir, didn't you tell Katey Connelley that when she
239 was called into court not to know much about the case?

A. No, I don't remember of using any such expression.

Q. Did you tell her that in substance?

A. I don't remember of doing so.

Q. What is the trouble with you; is your memory short, or don't you want to remember?

A. I think my memory is very good.

Q. Why don't you tell me, then, whether you said that in substance; do you think it is possible you told her that and do not remember it?

A. No, sir; I would have remembered it.

Q. Did you tell her?

A. No, sir; I don't remember of using any such expression.

Q. You say you would have remembered it if you had. Now, I ask you if you did or did not?

A. No, sir; I don't remember of so doing.

Q. You are desirous of having that word remember in your testimony?

A. Because I always like to be sure and positive.

240 Q. Then I understand you to say you are not sure and positive?

A. I am sure in my own mind, because if I had said it I would have remembered it.

Q. Will you tell us whether you did say so or not?

A. No, sir; I did not say so.

Q. You say you did not tell her so?

A. No, sir.

Q. Did you tell her that then in substance?

A. No, sir.

Q. You did not tell Katey Connelly, then, in substance, that when she was called she was not to know much about it?

A. No, sir; I told her to tell the truth.

Q. Did you not undertake, then, to shape her testimony for her? And didn't she say to you, "But I must tell the truth, must not I?"

A. I told her to tell the truth.

Q. Didn't you undertake to shape her testimony, and say to her about what she should say; and didn't she say to you, "But I must tell the truth, mustn't I?"

241 A. I don't remember her using any such words.

Q. Did she, or did she not, say that?

A. I don't remember that she did.

Q. Didn't she remind you that when she came before that court she would be under oath and must tell the truth?

A. I told her, I says, "You will be under oath to tell the truth." She may have made use of those words probably.

Q. She may have told you that when she came to that court she would be under oath and must tell the truth?

A. Yes, she may have told me, because I told her to do that.

Q. In what connection did she tell you that; what was the line of conversation that called that out?

A. I told her to go there and tell the truth, and probably at the same time she made the remark that she would be under oath, and
242 would have to tell the truth; probably she may have said that.

Q. Why should she say to you, "I will be under oath and must tell the truth? Explain that—why she should make that remark.

A. It occurred, probably, in the way I tell you.
Q. Was there any question, then, about her not telling the truth?
A. I told her to tell the truth.
Q. Why did you tell her that?
A. Because I wished her to go there and state just what she knew, and be careful and say just what she knew in the matter.

Question by Juror HARDY:

Q. You said that you heard Miss Caroline Owens make the remark that she would kill or poison Mr. Miles if she got married to him?
A. Yes, I heard her.
Q. You also said you heard your sister make the same remark?
A. Yes, sir; such remark that she would kill him, cut his throat, or something of that kind.
243 Q. Are you sure it was not your sister made the first remark?
A. No; it was quite separate; much in the same language; just in the same style.
Question by Mr. MAJORS. At the same time?
A. No; at different times, sir.
By Judge VAN ZILE, continued. Is it the custom of the Mormons that are in polygamy to introduce their wives by their maiden names?
A. I don't know, sir, because I don't remember of ever being introduced to a second or third wife by name.
Q. You have heard them called by name?
A. I don't remember of that; I have called them—where I have known men that have more than one wife—I have called them Mrs. so-and-so—by their husband's name.
Q. ask you if it is not common to call them by their maiden name?
A. No, sir.
Q. Then, if a man has got two or three wives they all go by the husband's name?
A. Yes, sir; except his Christian name.
244 Q. I don't suppose they would call them all John, but they would call them all Miles, would they?
A. Yes, sir; I guess so.
Q. You know so, don't you?
A. Yes, sir.

Redirect:

Q. Do you know what was the occasion of Miss Owen's visiting you or coming to your house during the examination before Commissioner Sprague?
A. Yes, sir.
Q. Now state that—something was asked you about that.
(Objected to by the district attorney as gone into indirect examination. Objection overruled.)
A. Miss Owen rapped at the door; I went and opened it and told her to come in, and took her into a room privately by herself, and she
245 commenced crying; I told her I was very sorry for her, but, of course, what she had done she had brought upon herself; she said that Mr. Van Zile and a Josephite preacher—I don't remember the name now; I believe it is Brand—that they had urged her on to do this thing, and they were pressing her to do it, and she was under surveillance all the time, and had asked Marshall Shaughnessy to go out for a few minutes, and she was in a rush to get back, but she said that she wished me to go and see Brother Miles and tell him that she was very sorry, and that she would like to go back to her husband and live with

him, and was very sorry for the course that she had taken, and "For God's sake, Brother Connelley, try to see John, and do the best you can!" I promised to do so.

Recross-examination:

Q. I suppose you saw John, didn't you?
A. Yes.

246 Mrs. SARAH M. CANNON sworn for the defendant.

Examined by Judge HAGAN:

Q. Do you know Caroline Owen?
A. Yes, sir.
Q. Mrs. Miles?
A. Yes, sir.
Q. Where did Carrie Owen stay the night of her marraige to John Miles?
A. At my house.
Q. How far is it from where the wedding reception was?
A. It is in the centre of the block, right north of the front house going up through the block.
Q. Do you remember the room that she remained in?
A. Yes, sir.
Q. Explain to the jury how it is situated?
A. In going to the room where she stayed you passed through the room in which I slept.
Q. What time did she leave the party to go to your house?
A. I think about 11 o'clock.
Q. Who was with her?
247 A. Myself.
Q. You went to your house?
A. Yes.
A. And she requested me to accompany her.
Q. What happened when you got there?
A. I don't know. I went up stairs with her and showed her the room in which she was to sleep, pushed the door open, and she exclaimed, "Beautiful! lovely!"

(Objected to by Judge Van Zile as immaterial. The second marraige is not disputed.)

By Judge HAGAN. Carrie Owen testified to one state of facts and we want to show another one. In the next place, she said that John Miles came there by force, and we want to show she sent for him. We wish to show that the statement that John Miles forced himself in there as a husband that night is not true.

(Objected to by Judge Van Zile as immaterial. Objection sustained.)

248 By Judge HAGAN. We propose to show by this witness that there was a marraige with Carrie Owens; that they slept together all that night at her request.

(Objected to by Judge Van Zile as incompetent, immaterial, and irrelevant. Objection sustained. Defendant excepts to the ruling of the court.)

By Judge TILFORD. Furthermore in this connection we expect to show by this lady that she, Miss Owens, sent for him as her husband. That will also come in of course, and the objection will cover it.

(Objected to by Judge Van Zile on the same ground. Objection sustained and defendant excepts to the ruling of the court.

ANGUS M. CANNON recalled for the defendant:

Q. I believe a wedding reception spoken of in this case was given at your house in October, '78?

A. Yes there was a supper given at my house in October last.

Q. For whom?

249 A. Mr. Miles told me he intended to marry——

(Prosecution objects to what Mr. Miles said.)

Q. Answer for whom the supper was given.

A. The supper was given for Mr. Miles and Miss Carrie Owen, whom he told me he intended to marry, and some of their friends.

Q. (By Judge VAN ZILE.) Who told you so?

A. Mr. Miles.

By Judge VAN ZILE. Did you not hear us object to what Mr. Miles told you?

No answer.

By Judge VAN ZILE. We ask the court to instruct the witness that he must not answer when there is an objection, for it seems he does not understand.

By the COURT. When an objection is made to any portion of the testimony you will desist from answering.

250 Q. It has been said here at the time of sitting at that table at supper spoke of Miss Emily Spencer and Julia Spencer and Carrie Owen as Mrs. Miles; said that there was quite a number of Mrs. Miles there and you wanted to designate them by different names; did you make a remark of that kind?

A. Not that I know of.

Q. Did you introduce any parties to Miss Emily Spencer, or Miss Spencer to anybody that night?

(Objected to as immaterial and irrelevant.)

Q. Did you hear them introduced by anybody?

A. I did not hear them introduced by Mr. Miles to any one.

Q. Did you hear them introduced by any other name?

A. Yes, sir.

Q. By what name?

A. They were introduced as Miss Emily Spencer and Miss Julie Spencer, the same as other parties in the room were introduced.

251 Cross-examined by Judge VAN ZILE:

Q. Who introduced them as Emily Spencer and Julia Spencer?

A. I introduced them.

Q. Who else?

A. I did not hear any one else.

Judge TILFORD sworn for the defendant.

Q. About this statement (statement sworn to by Miss Owen and published in Salt Lake Herald), did not she (Miss Owens) bring this to you once?

A. Yes; she brought it to me; brought it to my office.

Q. What did she say it was?

A. She stated that it was a statement that she had prepared, and expected or desired to have it published.

Q. What suggestion, if any, did you make to her?

A. I made one suggestion for an alteration in that. It was that I thought that when she reflected on certain parties who had befriended her during her trouble, she ought to be very particular to

252 show her appreciation of the kindness Marshall Shaughnessy had

shown her, and say nothing that could be tortured into any reflection at least upon him, and I suggested—and you will see that the words are put in there, obviously cramped—not only kindly but respectful. The lady instantly, and I thought, cheerfully, acceded to the request I had made. She appeared to accept the suggestion very readily, and seemed pleased that I had made it. That is the only suggestion I made to her.

Cross-examined:

Q. Point out the words of the correction.

By Judge HAGAN. It was not a correction.

Q. What was it?

A. It was simply an addition.

Q. Won't you point out the words?

Witness does so.

Q. Was that the only correction or addition?

253 A. There may have been others made, but that is the only one I now recollect, because that was made upon my suggestion.

Q. After reflecting upon that, is it not a fact that you read it over and made several suggestions?

A. It was read over.

Q. In your hearing?

A. Yes, sir.

Q. And did you not make several suggestions about it?

A. If you will ask more leading questions I can perhaps better remember. I cannot recollect now.

Q. I suppose you understand that question, Judge—whether you made several or not?

A. I don't think I did, Judge; but I mean to say if you would ask me some leading question or make some particular suggestion I might remember that.

Q. Upon looking through there you find that several corrections have been made.

254 A. Yes, sir; a number.

Q. Now, were not those made at your suggestion?

A. No, Judge. I think not, sir.

Q. Perhaps if you look at them you may refresh your memory.

A. Perhaps so, sir. (After looking it over) I cannot recollect any others, sir, but that.

Q. You were at that time counsel for John Miles, the defendant?

A. Yes, sir; I suppose I might call myself so, sir.

Q. You had attended his examination before the magistrate?

A. Yes, sir.

Q. You were aware at that time that the prosecution was pending?

A. Yes, sir.

Q. That we expected to indict the parties before the grand jury if an indictment could be found?

A. I suppose that was the case.

Q. You expected to defend it?

A. That depended very much upon circumstances.

Q. If he paid you for it you expected to defend him?

255 A. Of course I would defend Mr. Miles the same as any other.

Q. You defended Mr. Miles and were acting then as his counsel?

A. Yes, sir.

Q. You also understood that Miss Caroline Owens was a witness for the prosecution?

A. That she had been; yes, sir.

Q. And must necessarily be upon the trial?

A. Provided she was not his legal wife; then she could not testify.

Q. May I be permitted to ask you if you took any stock in her being his legal wife?

(Question withdrawn.)

WITNESS. No; I do not wish you to withdraw it. If I could rely upon the lady's own statement, I would have to believe that she did so consider herself.

Q. That was not the question. I ask you if you took any stock in her being his first wife. You did not believe it. You did not believe she was his first wife?

256 A. I did not know what to believe; I have seen so many statements made.

By Juror HARDY:

Q. Was this correction made after it had been sworn to before Stayner?

A. No, sir; before it had been sworn to. She expressed a wish then and there to have it published. She asked me if I thought she should have it published. I told her I did not know. Indeed, I offered very few suggestions as to what disposition she should have made of it. I was rather reluctant to have them about my office, or read it to me, if you take my word.

Q. Was John Miles with her?

A. Yes, sir.

Q. During the whole of the conversation he was present?

A. All the time.

Q. Came in with her?

A. Yes, sir.

Q. Did he introduce the business?

257 A. Well, if you will allow me, a little digressively, to tell you how they came there——

Q. Of course, if you cannot answer that without.

A. He did not introduce it any more than the lady. On the contrary, she took the more active and decided part in it.

Q. Did he express himself?

A. Miles appeared as a sort of second fiddle, the lady appearing to have better knowledge of the language and——

Q. Ask you if he was the first party that spoke about the business at that interview?

A. I cannot say, sir, which spoke first. If you will allow me to explain what he said to me previously——

Q. Very well.

A. He asked me if I had any objection to Miss Carrie accompanying him to my office and reading to me a statement which she had prepared and designed for publication. After some reflection, and

258 not wishing, as you say, to take any stock in that branch of the business, I reluctantly consented that the lady might come with him to my office and read me any statement that was ready and prepared for publication. Thereupon, that afternoon he came, I think, with the lady in question, and said that was the statement——

Q. Who introduced the business?

A. Mr. Miles said that the lady was there with him, and there was the statement he had referred to. Thereupon the statement was read, and alterations and suggestions made—nothing more by me that I can

possibly remember than the words in reference to Marshall Shaughnessy.

Defendant rests.

CAROLINE OWENS recalled for the prosecution.

Q. A statement, said to have been written by you, has been introduced in evidence, which you have read. I believe you have read it; have you?

259 A. Yes.

Q. I wish you would state to the court and jury how you came to make that statement; at whose dictation, and who was present, and what there was about it.

A. It was because I loved John Miles so much and I wanted to go back to him, and he had asked me to go back to him; but he said before I could—and I believe he made that statement while in Marshall Shaughnessy's office—that I must first make a public acknowledgement to the Mormon people that I had brought odium on them and myself, and must make this written statement, and I wrote every word at his dictation.

Q. Where?

A. In Angus Cannon's parlor.

Q. What about taking it to Judge Tilford's office or Judge Hagan's?

A. He first of all took it around to Angus Cannon to see if he approved of it. He said, "Yes, it was very good." Then to Judge Tilford's

260 office, and he made a few suggestions; then went to Charles Stayner; then he said he would see if the Herald would publish it.

Q. How did you come to swear to it?

A. Because John Miles said it would not be of any value unless I swore to it. I would have to swear to it.

Q. Afterwards it was taken to the Herald office?

A. Yes.

Q. You say something about your having to make that statement was said in Marshall Shaughnessy's office?

A. Yes; he said it once there, I believe.

Cross-examination waived.

Miss KATE CONNELLEY recalled.

Q. I think you testified when you were on the stand before that, at the time of the happening of these incidents that you have related, you were living at your brother's house?

261 A. Yes, sir.

Q. What is your brother's name?

A. John Connolley.

Q. You remember the time of the commissioner's examination in this case?

A. I do.

Q. Did you have any talk with your brother about what you must testify to?

A. Yes; I did.

Q. Won't you relate to this jury what he told you about what you should testify to?

(Objected to by defendant's counsel as immaterial.)

By Judge VAN ZILE. Is it immaterial to show the interest a witness has in the case? I propose to show now by this witness that John Connelley not only undertook to shape her testimony, but when he failed he gave her to understand she must leave his house.

(Objected to by defendant's counsel as incompetent and immaterial; objection overruled; exception.)

262 State what, if anything, he said to you about what you should testify to.

A. The first I knew of the case he came in Saturday morning and told me that Miss Carrie had had John arrested for polygamy?

(Objected to.)

By Judge VAN ZILE. Whatever induced the conversation I suppose is proper; she is leading up to the conversation.

By the COURT. Of course you can have the whole conversation. If what she is stating now is part of the conversation that she can give.

(Defendant's counsel excepts to the ruling of the court.)

Q. You may commence again and tell me what you were about to state.

A. He came in Saturday morning and told me Miss Carrie had had John arrested, and probably he would have two years in the penitentiary; but he said, "You don't know anything about it." I

263 says, "It is none of my business." He got to talking and I got angry with him, and he was saying we did not know anything about it; it was all hearsay. I says, "You know that John Miles married Emily Spencer; you heard him call her his wife." I went in my bed-room, and when he came back he says, "If you are summoned and say that John Miles called Emily Spencer his wife my home is yours no longer."

Defendant's counsel move to strike out the answer as immaterial and irrelevant.

By the COURT. It is simply contradicting what the witness said about his interest.

(Motion overruled. Defendant excepts.)

Q. The night of the visit of John Miles and Miss Carrie Owens at your brother's—you recollect the time I refer to—prior to the marriage, I ask you if you said there at any time that you, if you were in Carrie Owens' place, would kill John Miles?

264 A. I did not. I said that I would not do anything of the kind.

Part of the testimony of the witness, John Connelley, read as follows:

"Q. You said that you heard Miss Caroline Owens make the remark that she would kill or poison Mr. Miles if she got married to him?

"A. Yes; I heard her.

"Q. You also heard your sister make the same remark?

"A. Yes, sir; such remark, that she would kill him, cut his throat, or something of that kind.

"Q. Did she express herself bitterly about Miles?

"A. She told me if she was in Miss Owens' place she would kill or poison him."

Q. Did you make any such remark as that?

A. No, sir.

Q. Did you make any remark that if you were in Miss Owens' place you would kill him, cut his throat, or anything like it?

265 A. No, sir.

Q. Did you in any such way?

A. No; not in that way at all.

Cross-examination waived.

M. SHAUGHNESSY sworn for the prosecution.

Q. You are United States marshal, are you?

A. Yes, sir.

Q. Your office is in this building?
A. Yes.
Q. Do you know the defendant, John Miles?
A. Yes.
Q. And Miss Caroline Owen?
A. I do.
Q. State whether or not you heard a conversation between them in which something was said about having to put a card in the papers, and what it was, or should be. I think you understand what I refer to; please state fully.
Q. Yes, sir; they called at my office, and Mr. Miles—I don't recollect whether he stated it to me or not, but I was present in the
266 office, and he remarked that before she could come back to him as a wife that she would be compelled to retract some statements.
Q. Did he say how or when?
A. Well, a denial—a public denial.
Q. A public denial?
A. Yes.
Q. Was that the substance of it?
A. That was about all of it, I believe.

Cross-examined:

Q. Did he state what statements she had to retract?
A. No, sir; I believe not.
Q. No specifications were made—it was just general, that she would have to retract some statements?
A. Yes, sir; that was about it.

KATE CONNELLEY recalled.

Q Did you hear Miss Owens on that night at your brother's house say that she would kill or poison John Miles?
267 I did not. But she made a statement. I told her that I would not marry Miles—would not have anything to do with him. Of course, all I know about the proceeding was what my brother told me; he knew all about the parties in England, and he told me the evening after he came about John Miles' and Emily Spencer's ——
Cross examination waived.
Court adjourned until Monday morning, at 9.30 o'clock.
Both parties here rest.

MONDAY, *May 5th*, 1879.

Case argued to the jury by Mr. Beatty, assistant district attorney, and by Judge Tilford, for defendant.
Adjourned until to-morrow morning, at 9.30 o'clock.

Case argued by the district attorney.
The court instructed the jury as follows: * * *

The foregoing contains all the testimony given in the trial, and no other or further testimony was had or produced other than is
268 reported above.
The case having been argued by the respective counsel, the court thereupon charged the jury as follows, to wit:

TERRITORY OF UTAH:

Third district court.

THE UNITED STATES }
vs.
JOHN H. MILES. }

GENTLEMEN OF THE JURY: The defendant, John H. Miles, is on trial charged with having violated a law of the United States, prohibiting bigamy or polygamy in the Territories, or other places over which the United States has exclusive jurisdiction.

The peculiar circumstances surrounding the case and the trial gives to it more than ordinary interest, and have naturally caused some excitement. It will therefore be your especial and imperative duty
269 to guard your minds against any and all outside influence, and to try this case as calmly and dispationately as you would any other, and to decide according to the evidence as produced in open court, applying to the facts the law as given you by the court, uninfluenced by any bias or prejudice against or sympathy for the defendant. Divest your minds therefore of any feeling and prejudice which may prevent you from carefully and accurately weighing the evidence, giving a true and impartial verdict, just alike to the defendant and to the government.

By a wise and humane provision of the law, the defendant must be by you regarded as innocent until his guilt is established beyond a reasonable doubt, and if the prosecution fail to establish by this full
270 measure of proof any of the facts necessary to constitute the crime charged against the defendant, then the law makes it your duty to give him the benefit of that doubt, and acquit him. The law also makes you the sole judges of the facts, the weight of the evidence, and the credibility of the witnesses.

I have said the prisoner's guilt must be established beyond a reasonable doubt; an important thing therefore for you to understand is what is meant by a reasonable doubt, and what amounts to proof beyond a reasonable doubt. It is easier, perhaps, to understand this than it is to define it. A reasonable doubt is such an one as would arise in the minds of reasonable men on any subject—just such men as you are, who are selected because you are reasonable, competent men, to try such a question. Proof beyond a reasonable doubt is such as will produce an abiding conviction in the mind to a moral certainty that the
271 fact exists that is claimed to exist; that the fact to be proven actually exists; such proof as produces an abiding conviction in the mind of a moral certainty that the fact exists, so that you feel certain that it exists; a balance of proof is not sufficient. In a civil case a balance of proof is sufficient. A balance of evidence is that which you think is most likely to have been the facts; the way your mind preponderates upon a question of fact, that makes out a balance, but that will not answer here; you must go beyond that. There must not only be a balance of proof, but there must be this measure of proof which removes all reasonable doubt—all doubt that arises in your mind as reasonable men, and produces an abiding conviction, to a moral certainty, that the facts charged exist. A juror in a criminal case ought not
272 to condemn unless the evidence excludes from his mind all reasonable doubt, as I have explained it, as to the guilt of the accused. That is, unless he be so convinced by the evidence, no matter what the

class of the evidence of the defendant's guilt, that a prudent man would feel safe to act upon that conviction in matters of the highest concern and importance to his own dearest personal interests.

Proof beyond a possibility of doubt is not required, because such proof never can be made. It is not to be shown to you that it is not possible that this respondent is innocent, to show beyond all possibility of doubt that he is guilty, but it is required of the government to produce such evidence that when you look it over as reasonable men no doubt arises in your mind, that is, no reasonable fair doubt, as to any fact necessary to be made out to establish the crime charged upon the respondent.

273 I have been thus particular in stating this to you to impress it upon your minds as the guide by which you are to be governed throughout this whole case in your investigation of the facts in controversy.

No little has been said in course of the trial and on the argument about circumstantial evidence; and as to the force and effect to be given to such evidence, it is proper that I should say to you that what circumstances will amount to proof can never be matter of general definition. The legal test is the sufficiency of the evidence to satisfy the understanding and conscience of the jury. On the other hand, absolute metaphysical and demonstrative certainty is not essential to proof by circumstances. It is sufficient if they produce moral certainty to the exclusion of every reasonable doubt. Even direct and positive

274 testimony does not afford grounds of belief of a higher and superior nature. The rule, even in a capital case, is that, should the circumstances be sufficient to convince the mind and remove every rational, reasonable doubt, the jury is bound to place as much reliance on such circumstances as on direct and positive truth, for facts and circumstances cannot lie, but each of the circumstances essential to the conclusion should be fully established in the same manner and to the same extent as if the whole issue rested upon it.

It is sometimes thought, and sometimes stated, that jurors in their verdict swear that the prisoner is guilty or not guilty. The jury are sworn to no such thing. They declare, in rendering a verdict, the result of the conviction of their minds from the evidence produced,

275 having previously sworn to give a true verdict according to the evidence.

Excepted to by deft.

The prosecution asked for and the court gave, at the request of the prosecution, the following instructions, to wit, to the giving of each and every the defendant, by his attorneys, duly excepted.

First request to charge.

UTAH TERRITORY:

In 3rd dist. court.

THE UNITED STATES *vs.* JOHN MILES. } Bigamy.

The prosecution requests the court to charge—

1st. The statute under which the defendant is indicted and which the

government charges he violated is section 5352 of the Revised Statutes of the U. S., and reads as follows (reads the section). It will be observed that in order to convict the defendant of the offence charged, the
276 people must show :

1st. That the defendant, Miles, had a wife living, and that that wife was she who in this trial is called Emily Spencer.

2nd. That having said living wife, he did, within this Territory and within this district, marry another woman, viz, Miss Caroline Owens.

And if you should find that these two propositions have been proven beyond a reasonable doubt, then and in that case your verdict should be guilty.

Given.

P. H. EMERSON, *Judge.*

277 *2nd request to charge.*

UTAH TERRITORY:

3rd judicial district.

THE UNITED STATES
vs.
JOHN MILES.

2nd. As heretofore stated it is incumbent upon the prosecution to prove—

First. That the defendant, Miles, had a living wife at the time he married Miss Caroline Owens.

Or, in other words, the prosecution must show that the defendant had married Miss Emily Spencer, and that afterwards, no matter how soon afterwards, if the next minute, if it was a separate and distinct act and while Emily Spencer was still living and his wife, he married Miss Caroline Owens. In order, however, to prove this fact it is not necessary that the prosecution should prove an actual marriage by one who
278 was an eye witness of the ceremony, but proof that the prisoner has declared himself and has been reputed to be married is all that is necessary and will support a conviction.

In all criminal prosecutions the confessions of a party, his admissions and acts, amounting to confessions or admissions, are not only admissible but often the strongest evidence against him; and this is true in a prosecution for bigamy as well as in every other case.

Mr. Greenleaf, a standard author on the law of evidence, says—and I charge you that it is the law and applicable to this case—

"Any recognition of a person standing in a given relation to others, is prima facie evidence against the person making such recognition that such relation exists; and if the defendant has solemnly and seri-
279 ously admitted the marriage it will be received as sufficient proof of the fact."

And, again, the same author says the marr*ai*ge of one indicted for bigamy may be proved "by the deliberate admission of the prisoner himself." I therefore charge you in this case that it is competent for the prosecution to prove the marr*ai*ge of the defendant to Miss Emily Spencer by the admissions of the defendant, and if you find in this case that the prosecution have proven this first marr*ai*ge by the admissions of the defendant, or otherwise, and that while said Emily, his wife, was living, he married Miss Caroline Owens, then the prosecution have made

out their case as charged in the indictment, and your verdict should be guilty.

Given as modified.

P. H. EMERSON, *Judge.*

280 As modified, the court says:

"The declarations of the prisoner and the fact that he has recognized, or recognized and cohabited with the woman alleged to be his wife, this is only evidence tending to prove an actual marr*aige*, and it is for you to decide whether the facts proven are sufficient to warrant you in finding that the prisoner was in fact married to the alleged wife, and unless you so believe, you should acquit, although you may believe the prisoner recognized and cohabited with her as his wife."

281 *3rd request to charge.*

TERRITORY OF UTAH:

3rd dist. court.

THE UNITED STATES
vs.
JOHN MILES.

The fact that the defendant married Miss Emily Spencer may be proven like any other fact in the case by the admissions of the defendant, or by circumstantial evidence; it is not necessary that it be proven by witnesses who were present at the ceremony. Therefore, in this case, if you find, from all the facts and circumstances proven in the case, and from the admission of the defendant, or from either, that the defendant, Miles, married Emily Spencer, and while she was yet living, and his wife, he married Caroline Owens, as charged in the indictment, your verdict should be guilty.

282 *4th request to charge.*

TERRITORY OF UTAH:

3rd dist. court.

THE UNITED STATES
vs.
JOHN MILES.

A legal wife cannot, but when it appears in a case that the witness is not a legal wife but a bigamous or plural wife, then she may testify against the bigamous husband, and her testimony should have just as much weight with the jury as any other witnesses, if the jury believe her statements to be true. And her evidence may be taken like the evidence of any other witness to prove either the first or the second marr*aige*. And so in this case you are at liberty to consider the testimony of Miss Caroline Owens, if you find from all the evidence in the case that she is a second and plural wife, and give it all the weight you think it entitled to, and may use it to prove the first marr*aige*
283 alleged, to wit, the marr*aige* of defendant and Emily Spencer, or any other fact which in your opinion is proven by her testimony. In short, she would, in that case, stand like any other witness in the case, and you may take her testimony, if you believe it, as you do the testimony of any witness to prove any fact about which she has testified.

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276 people must show:

1st. That the defendant, Miles, had a wife living, and that that wife was she who in this trial is called Emily Spencer.

2nd. That having said living wife, he did, within this Territory and within this district, marry another woman, viz, Miss Caroline Owens.

And if you should find that these two propositions have been proven beyond a reasonable doubt, then and in that case your verdict should be guilty.

Given.

P. H. EMERSON, *Judge.*

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UTAH TERRITORY:

3rd judicial district.

THE UNITED STATES
vs.
JOHN MILES.

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278 was an eye witness of the ceremony, but proof that the prisoner has declared himself and has been reputed to be married is all that is necessary and will support a conviction.

In all criminal prosecutions the confessions of a party, his admissions and acts, amounting to confessions or admissions, are not only admissible but often the strongest evidence against him; and this is true in a prosecution for bigamy as well as in every other case.

Mr. Greenleaf, a standard author on the law of evidence, says—and I charge you that it is the law and applicable to this case—

"Any recognition of a person standing in a given relation to others, is prima facie evidence against the person making such recognition that such relation exists; and if the defendant has solemnly and seri-
279 ously admitted the marriage it will be received as sufficient proof of the fact."

And, again, the same author says the marr*ai*ge of one indicted for bigamy may be proved "by the deliberate admission of the prisoner himself." I therefore charge you in this case that it is competent for the prosecution to prove the marr*ai*ge of the defendant to Miss Emily Spencer by the admissions of the defendant, and if you find in this case that the prosecution have proven this first marr*ai*ge by the admissions of the defendant, or otherwise, and that while said Emily, his wife, was living, he married Miss Caroline Owens, then the prosecution have made

out their case as charged in the indictment, and your verdict should be guilty.

Given as modified.

P. H. EMERSON, *Judge.*

280 As modified, the court says:

"The declarations of the prisoner and the fact that he has recognized, or recognized and cohabited with the woman alleged to be his wife, this is only evidence tending to prove an actual marr*aige*, and it is for you to decide whether the facts proven are sufficient to warrant you in finding that the prisoner was in fact married to the alleged wife, and unless you so believe, you should acquit, although you may believe the prisoner recognized and cohabited with her as his wife."

281 *3rd request to charge.*

TERRITORY OF UTAH:

3rd dist. court.

THE UNITED STATES
vs.
JOHN MILES.

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282 *4th request to charge.*

TERRITORY OF UTAH:

3rd dist. court.

THE UNITED STATES
vs.
JOHN MILES.

A legal wife cannot, but when it appears in a case that the witness is not a legal wife but a bigamous or plural wife, then she may testify against the bigamous husband, and her testimony should have just as much weight with the jury as any other witnesses, if the jury believe her statements to be true. And her evidence may be taken like the evidence of any other witness to prove either the first or the second marr*aige*. And so in this case you are at liberty to consider the testimony of Miss Caroline Owens, if you find from all the evidence in the case that she is a second and plural wife, and give it all the weight you think it entitled to, and may use it to prove the first mar*aige*
283 alleged, to wit, the marr*aige* of defendant and Emily Spencer, or any other fact which in your opinion is proven by her testimony. In short, she would, in that case, stand like any other witness in the case, and you may take her testimony, if you believe it, as you do the testimony of any witness to prove any fact about which she has testified.

The defendant prepared and handed to the court the following instructions, and asked that they be given to the jury, to wit:

284 *Def't's instructions.*

PEOPLE
vs.
JOHN H. MILES.

The defendant asks the court to give the following instructions:

1.

This is a prosecution for the crime of bigamy, and defendant is charged with having first married one Emily Spencer, and then after marrying one Caroline Owens, the said Emily Spencer still living.

Now, in order to convict the defendant, three distinct facts must be established by the prosecution beyond a reasonable doubt, to wit:

1st. That the defendant was first married to Emily Spencer, as charged.

2nd. That thereafter he married Caroline Owens.

3rd. That Emily Spencer was living at the time of such alleged second marriage.

Given in substance in other part of charge.

P. H. EMERSON.

Def't excepts.

285 2.

The jury are further instructed that in a prosecution for bigamy the first marriage must be established by proof to have been a valid, subsisting marriage at the time of the second marriage, and to prove this there must be evidence of a marriage in fact.

Not given. Def't excepts.

Given in substance in other part of charge.

P. H. EMERSON.

3.

Proof of a valid marriage involves questions of law as well as of fact, and the man calling a woman "his wife," by a person charged with bigamy, is insufficient in law to prove a marriage; the fact of a marriage having taken place between them must be proven.

Refused.

P. H. EMERSON, *Judge.*

Def't excepts.

4.

The first marriage and its legality must be affirmatively proved by evidence beyond the mere declarations, confessions, admissions,
286 or reputations of the defendant; and if the jury believe from the evidence that there is no proof that def't and Emily Spencer

were ever married beyond the mere admissions, confessions, or declarations of the defendant, then they will find the defendant not guilty.

Refused.

P. H. EMERSON, *Judge.*

Def't excepts.

5.

Beyond the fact of a valid marriage, the jury must also find from the evidence, beyond a reasonable doubt, that the alleged marriage with Emily Spencer, if at all, was the first marriage, and was entered into prior to the alleged marriage with Caroline Owens; otherwise the defendant is entitled to a verdict of not guilty.

Given.

P. H. EMERSON, *Judge.*

6.

In prosecutions for bigamy, the mere confessions, or admissions, or declarations of a party are not alone sufficient evidence of the first marriage, but there must be proof of a marriage in fact; otherwise
287 the defendant is entitled to a verdict of not guilty.

Refused.

P. H. EMERSON, *Judge.*

Def't excepts.

7.

The jury are further instructed that the prosecution is held to exact strictness in proving the name of the person with whom the second marriage is alleged to have taken place; and if you find from the evidence that Caroline Owens is not the name of the person with whom defendant is alleged to have contracted the second marr*aige*, then the variance is fatal, and you will find for the defendant.

Refused.

P. H. EMERSON.

Def't excepts.

8.

If the jury find from the evidence that instead of marrying one Caroline Owens, the defendant married one Caroline Owen Male, by name, and in such name, then the variance is fatal, and the verdict will be not guilty.

Refused.

P. H. EMERSON.

Def't excepts.

9.

If the jury have any doubts upon any of the foregoing questions to be determined by them, then the law gives to the defendant the ben-
288 efit of every reasonable doubt; and if from the evidence you have any reasonable doubt as to whether the foregoing facts, or any of them, have been clearly proven, you will give the defendant the benefit of such doubt, and find a verdict of not guilty.

Refused.

P. H. EMERSON.

Def't excepts.

10.

If the jury find that Caroline Owens, at the time of her alleged marraige with defendant, knew or had reason to believe that defendant had previously married another, then, in contracting such second marraige, she became and was an accomplice to the same.

Refused.

P. H. EMERSON.

Def't excepts.

11.

A conviction cannot be had on the testimony of an accomplice, unless he or she is corroborated by other evidence, which in itself and without the aid of the testimonyof the accomplice, tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offience or the circumstances thereof.

Refused.

P. H. EMERSON, *Judge.*

Def't excepts.

289 12.

In all criminal prosecutions circumstantial evidence of a conclusive nature may often avail where direct testimony is inaccessible; but it must be testimony not reasonably capable of any other interpretation, and must be that class of testimony from which nothing but guilt can, in the nature of things, be deduced. Calling a woman "a wife," and even holding her out to the world as such, is not of itself sufficient evidence of a valid marraige in cases of the kind now on trial, for it would be unsafe to permit a conviction upon proof which is susceptible of two or more interpretations, and upon which any theory can be reasonably based of innocence of the offence charged.

Substance given in charge of the court.

P. H. EMERSON.

Def't excepts.

290 B.

Now, gentlemen, I have gone over all the points of the law that I now deem applicable to the case. The facts are entirely and solely with you. The entire responsibility of the case is now given into your keeping, and probably no words of mine could add to this feeling of responsibility, and I only mention it so that you will be careful to do your duty on account of this responsibility.

This is not a government of men, but a government of laws. What I say to you here is because I am required to instruct you as to the law as applied to the case; that is the part of my duty under the law of the land. What you do you do not do as men, but as jurors under the law. The court has been sworn to administer the law as it finds it, and you should do the same thing.

You should not shrink from doing your duty manfully and carefully. Your duty to the prisoner requires this. Your duty to the
291 government requires the same thing. You should be careful to be right. You need not fear anything except to be wrong.

Therefore you are now to take this case and look it over with all the care of which you are possessed, and bring to its consideration the best powers of mind and the best judgment you have, with a stern desire to do your duty in regard to it. If you come to the determination that the respondent is guilty, convict him; and if he is not guilty, or if you have a reasonable doubt of his guilt, acquit him.

To the giving of the foregoing instruction, marked B, the def't at the time excepted.

292 The jury then retired to consider of their verdict, and having agreed, returned into court and rendered the following verdict, to wit:

(Title of cause.)

We, the jurors in the above entitled case, find the defendant, John Miles, "guilty" as charged in the indictment.

A. MAJORS,
Foreman.

Whereupon, the verdict having been duly received, the court ordered the defendant to be and appear in court on May 31st, 1879, at ten o'clock a. m. of said day, for sentence & judgment.

On the 8th day of May, 1879, defendant made, served, and filed in court his motion and notice of motion for a new trial herein as follows, to wit:

293 *Notice of motion for a new trial.*

In the district court of the third judicial district of Utah Territory.

COUNTY OF SALT LAKE:

UNITED STATES, PLAINTIFF,
vs.
JOHN H. MILES, DEFENDANT.

To P. T. VAN ZILE,
U. S. Dist. Att'y in and for Utah Territory:

You will please take notice that the defendant, John H. Miles, will, on Friday, May 31st, 1879, at the hour of ten o'clock a. m. of said day, or as soon thereafter as counsel can be heard, move said court to set aside the verdict herein, and grant the defendant a new trial herein upon the grounds mentioned in the motion hereto attached and served herewith.

Yours, &c.,

TILFORD & HAGAN,
Att'ys for Def't.

294 *Motion for new trial.*

In the district court of the third judicial district of Utah Territory.

COUNTY OF SALT LAKE:

UNITED STATES, PLAINTIFF,
vs.
JOHN H. MILES, DEFENDANT,

Now comes said defendant and moves the court to arrest judgment

herein and set aside the verdict of the jury and grant him a new trial herein, and specifies the following as the grounds of his motion.

1st. That the court has misdirected the jury in matters of law during the trial herein & in the charge given by the court to the jury, and has erred in the decision of questions of law arising during the course of the trial.

2nd. That the verdict is contrary to law and the evidence.

The def't, for a more specific enumeration of the errors relied
295 upon in this motion, refers to the statement to be filed herein in the motion for a new trial.

TILFORD & HAGAN,
Att'ys for Defendant.

By consent of parties said notice and motion for a new trial was set down for hearing on May 31st, 1879, at 10 o'clock a. m.

The defendant assigns the following errors upon which he will rely on his motion for a new trial, and on appeal to any court, if such motion be denied, to wit:

1. The court erred in allowing the attorney for the United States to ask the jurors, or any of them, if they believed in polygamy, or that he or they belonged to the Mormon Church, or in allowing any questions as to the religious belief of any juror.

2. The court erred in appointing triers to try the challenge of
296 the U. S. district attorney to any & all the jurors mentioned in the foregoing statement.

3. It was error for said triers to enquire into or consider the religious belief of any of the jurors.

4. The court erred in allowing witness Mrs. W. J. Foreman to relate a conversation between Miles, defendant, and Caroline Owens, in order to prove a marriage with Emily Spencer; and the court erred in allowing the question, "I ask if you heard this said by Miss Owens, 'If she is your wife, who am I?'" and also allowing the same question to be asked of witness Miss Foreman.

5. The court erred in allowing in evidence any declarations or admissions of Miles, made at the house of Angus Cannon on the evening of the alleged dinner party.

297 6. The court erred in ruling that the mere calling a woman "wife" by defendant was admissable to prove a marriage with her.

7. The court erred in allowing the questions to witness D. H. Wells as to the description of the dress or robes of persons visiting the endowment house.

8. The court erred in allowing witness Caroline Owen to be sworn, as she is the alleged second wife, and, so far as appears, the wife of defendant Miles, and no first marriage or other marriage of def't Miles was proven to the court or jury; that admissions or declarations alone cannot prove a marriage in a case such as the one at bar, and that Caroline Owen its an incompetent witness and disqualified from testifying at this stage of the case.

9. The court erred in excluding the proposed testimony of
298 witness Mrs. Sarah Cannon when the defense proposed to show that there was a marriage with Caroline Owens, & that def't and Caroline, as husband and wife, slept together at the house of witness on the night of the marriage; and the court erred in excluding the testimony of same witness that Caroline Owen sent for def't Miles as her husband, and said he was her husband.

10. The court erred in its instructions to jury & said instructions are against law.

11. The court erred in giving the first request asked for by the prosecution.

12. The court erred in giving requests Nos. 2, 3, & 4, asked for by the prosecution.

13. The court erred in refusing and failing to give instructions
299 Nos. 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, & 12, asked for by the defendant.

14. The evidence was insufficient to sustain the verdict and the same was against the evidence in this, that in prosecutions for bigamy the mere confessions, or admissions, or declarations of a party are not alone sufficient evidence of the first marriage, but there must be proof of a marriage in fact, otherwise the defendant is entitled to a verdict of not guilty. The evidence was also insufficient in this, that the name of the person with whom defendant is alleged to have contracted the second marriage appears to be Caroline Owen Male, and not Caroline Owens, as charged in the indictment, and the evidence shows that defendant married Caroline Owen Male and not Caroline Owens.

15. There was no evidence showing the first marriage, or a marriage in fact with Emily Spencer.

300 Wherefore defendant, John H. Miles, prays the judgement of the court that no judgement be rendered or sentence passed herein and that said verdict be set aside and a new trial granted herein.

TILFORD & HAGAN AND
DUSENBERRY,
Atty's for Def't.

301 TERRITORY OF UTAH,
County of Salt Lake, ss:

It is agreed that the foregoing is a full, true, and correct statement to be used on motion for a new trial herein and to be used on appeal as a statement on appeal, if such motion be denied.

TILFORD & HAGAN &
W. DUSENBERRY,
Att'ys for Def't.
PHILIP T. VAN ZILE,
U. S. Dist. Att'y.

At Salt Lake City, Utah, May 31st, 1879.

302 At a district court of the third judicial district of the Territory of Utah, county of Salt Lake, held at the court-house in the city and county of Salt Lake, on the 2nd day of June, A. D. 1879.

Present, Hon. Philip H. Emerson, judge of the third district court.

UNITED STATES, PLAINTIFF
vs.
JOHN MILES, DEFENDANT.
} Indictment for bigamy.

The defendant, John Miles, having been convicted of the crime of bigamy by a jury of twelve persons, duly empanelled thereto in this court May 6th, 1879, and being now in court to receive sentence upon said conviction, and being asked by the court if he had anything to say in extenuation of the effect of the law or why sentence should not be passed upon him and answering thereto moved for a new trial and the same being submitted to the court upon the statem t herein

303 without argument and the court, duly advised thereon, orders that the said motion be and the same is hereby overruled. Defendant excepts.

And it is further ordered, adjudged, and decreed by the court that the defendant, John Miles, forfeit and pay to the United States of America a fine of one hundred (100) dollars and further that the defendant, John Miles, be confined and imprisoned in Nebraska Penitentiary, at Lincoln, in the State of Nebraska, for the term of five (5) years, and the defendant giving notice of appeal and asking therefor it is ordered that pending such appeal herein the present appearance bond of defendant remain in full force and effect.

304 In the district court of the third judicial district of Utah Territory.

COUNTY OF SALT LAKE:

UNITED STATES, PLAINTIFF,
vs.
JOHN H. MILES, DEFENDANT.

To P. T. VAN ZILE,
Att'y for the United States and U. S. district att'y for Utah Territory:

You will please take notice that the defendant, John H. Miles, hereby appeals to the supreme court of Utah Territory from judgment and sentence rendered and pronounced herein, by said district court, against the defendant, John H. Miles, on the 2nd day of June, 1879, and from the whole thereof and also from an order made and entered in the minutes of said district court, on the said 2nd day of June, 1879, overruling and denying said defendant's motion for a new trial herein.

Yours, &c.,

TILFORD AND HAGAN AND DUSENBERRY,
Att'ys for Def't.

Service acknowledged June 2, 1879.

P. VAN ZILE,
U. S. Dist. Att'y.

305 And afterwards at the term of the said supreme court of Utah Territory began and held at Salt Lake City on the 2d day of June, A. D. 1879, proceedings were had in said court and in said cause and entered on the records of said court as follows, to wit:

MONDAY, *June* 16, A. D. 1879.

* * * * * * *

THE UNITED STATES, RESPONDENTS,
vs.
JOHN H. MILES, APPELLANT.
From 3d dist.

This cause coming on regularly for hearing was argued by F. Tilford esq., for appellant, and P. T. Van Zile, esq., U. S. att'y, for respondents submitted and taken under advisement by the court.

Also,

WEDNESDAY, *July 2d, A. D.* 1879.

* * * * * * *

THE UNITED STATES, RESP'D'TS, } From 3d dist.
vs.
JOHN H. MILES, APPELLANT. }

306 This cause having been heretofore argued and submitted and the court being sufficiently advised thereupon, it is now here ordered and adjudged that the judgment of the district court therein be, and the same hereby is, affirmed.

To this order and judgment, said appellant, by his counsel, now here excepts, and a writ of error to remove said cause to the Supreme Court of the United States being asked, the same was allowed, and the court being further desired by said counsel to fix the amount of a bond to be given by appellant to stay execution of judgment and sentence pending such writ of error, the same is now here fixed at the sum of five thousand dollars. Such bond having been later this day filed, is hereby approved, and execution of judgment staid till further order of this court.

307 On the 2d day of July, A. D. 1879, was filed in the office of the clerk of said supreme court of Utah Territory the opinion of said court in said cause of which the following is a copy, to wit:

308 In the supreme court of Utah Territory, June term, 1879.

UNITED STATES, RESPONDENT, }
vs.
JOHN MILES, APPELLANT. }

Appeal from third district court.

BOREMAN, Justice, delivered the opinion of the court:

The appellant was indicted and convicted of the crime of bigamy, and from the judgment in this respect he has appealed to this court.

The first assignment of error was that "the court erred in allowing the attorney for the United States to ask the jurors or any of them if they believed in polygamy, or that he or they belonged to the Mormon Church, or allowing any questions as to the religious belief of any juror."

The crminal procedure act says that a particular cause of challenge is "for the existence of a state of mind on the part of the juror which leads to a just inference in reference to the case that he will not act with entire impartiality, which is known in this act as actual bias."—(Sec. 241, second clause, Laws of Utah, p. 178.)

A religious belief takes strong hold upon the individual. If a person believes it is his religious duty or privilege to do an act, he would not, as a consequence, look upon the said act as criminal. Looking upon the act as innocent, he would naturally, but perhaps unconciously, be averse to inflicting punishment therefor. He would not like to find a man guilty of a crime for doing that which he thought the Almighty authorized him to do. In such a case he would naturally lean toward an acquittal, and would possess that state of mind which would lead to a just inference that he would not act with entire impartiality in the case.

The inquiry as to whether the person offered as juror was a member of the Mormon Church, was of the same character as that respecting his belief. Both questions go to the belief. It is one of the leading doctrines of the Mormon Church that polygamy is divinely appointed, and that it is ordained of God, and to be reverenced as such. It is likewise one of the cardinal teachings of that church that as it is God's law it is above man's law, and that when the practice comes in conflict with the laws of the land the laws of the church must be obeyed and the laws of the land disobeyed.

One belonging to a church holding the offense charged to be of divine sanction, and above the civil law, might also be influenced by the probable action of his church toward him if he failed in the jury box as well as elsewhere to uphold its doctrine.

But all of the jurors to whom these questions were asked, and who were excluded, were in the first place challenged for actual bias and the challenge submitted to triers appointed by the court. These triers in each instance found the challenge true, and their decision was final. These questions therefore were not material nor important. The court and the parties were bound by the decision of the triers, for the statute says that if the triers find the challenge true, "the juror must be excluded." (Crim. Procedure, sec. 253, Laws of Utah, 1878, p. 113.)

It is claimed, however, that the court had no authority for appointing triers. In the selection of jurors the Territorial statutes are to control the courts when there is no conflict with the United States statutes. (U. S. vs. Reynolds, U. S. Supreme Court, but not yet reported; Clinton vs. Englebrect, 13 Wall., 434.)

Our Territorial statute, the criminal procedure act of 1878, requires the court to appoint triers when the challenge is for actual bias and the challenge is denied. (Laws of Utah, 1878, pp. 112–3.) We do not, therefore, see that there was any error committed by the court in appointing the triers.

The indictment charges the second marriage to have taken place between appellant and Caroline Owens, but it is alleged that her name is Caroline Owen Maile or Caroline Owen. The name of this party after adoption by her uncle was that of Caroline Owen, and such was the name that she was known by, and she was not afterwards known by the name of Maile. The offense is sufficiently described. There is no evidence or claim that the appellant was misled as to the person intended, especially when in the appellant's brief it is stated that "the alleged second marriage" is admitted. This is not the case of a mistake in the defendant's name, but if it were, the description would have been sufficient and the variance immaterial. The names of Owen and Owens have the same sound. (State vs. Havely, 21st Mo.)

It is claimed that Caroline Owen being a party to the second marriage was an accomplice, and that the court should have instructed the jury not to convict on her testimony unless corroborated by other witnesses. Under the United States statute against bigamy or polygamy, there is no such thing as an accomplice. It is unknown to the law.

Philips says that an accomplice "in all cases expects to earn a pardon," and hence such testimony needs to be corroborated, "the temptation to commit perjury being so great, where the witness by accusing another may escape himself." (Phil. Ev., pp 37-41.)

The reason of the rule failing, the rule itself fails. In the instance before us, no such temptation could influence the witness, nor could any hope of pardon. She had committed no offense, and could not commit the offense charged against the defendant.

The allowing of questions to be put to witness D. H. Wells, respecting the dress or robes of the persons visiting the endowment house, is assigned for error.

All marriages in the endowment house, as shown by the testimony, are clandestine and performed under cover of sworn secrecy. Direct testimony is therefore extremely difficult of access; and hence every fact going to show the object of the party's visit becomes material. If it were necessary that a peculiar style of dress be worn in case of marriage, it was proper to show what that style was. If the party were dressed according to the requirements in case of marriage, the presumption would be that she was there for that purpose. If she were not dressed in the mode required, the presumption would be that she was not there for the purpose of marriage. With this view the question was certainly proper.

It is said that the first marriage was the corpus delicti and must be clearly proven before confessions or admissions of the defendant can be admitted in evidence. Such a rule cannot apply to bigamy or polygamy cases, but only to those where the deed—the corpus delicti—is one thing, and the fact as to who did the deed is another. In bigamy or polygamy cases these two facts are not separate and distinct, but one and the same. The crime is not committed at all if defendant did not commit it. It requires his participation to constitute and complete the offense.

It is, however, strenuously contended that the declarations, confessions, or admissions of the prisioner are not alone sufficient proof of the first marriage. If the surroundings of such admissions show them to have been deliberate, they would be sufficient to support a verdict of guilty. Greenleaf says that "marriage may be proved by the deliberate admissions of the prisoner." (3 Gr. Ev., sec. 204.) We are entirely without statute upon the subject of marriage, and the manner of its celebration and the proof thereof are left as at common law. As no special ceremony is required at common law, no proof is required to show whether any was performed or not. The only questions to be determined in this respect were whether defendant and Emily Spencer were ever married, and, if so, was such marriage prior to that between defendant and Carrie Owen. The existence of such prior marriage may be shown "by evidence of facts from which it may be inferred." (1 Bou. Just. 263; Bishop St. Crimes, sec. 609. 1 Bishop M. & D. secs. 260, 266.)

That the prisoner's deliberate admissions are facts from which the marriage may be inferred is, as we believe, well established, and supported by the later English as well as American authorities, and the rule does not seem either unreasonable or unjust, but eminently proper and right. (1 Bishop M. & D., sec. 497, 500. Wharton's Am. Cr. Law, sec. 2631. 1, Phile on Evidence (side page), 452, 542; 2 Gr. Ev., § 461, note (1); 2 Starkie's Ev. (6 Am. ed.), 251-2, "C"; 1 Russell on Crimes, 218, notes; Murtagh's Case, 1 Ashmead, 272; Forney vs. Hallanhen, 8 S. and R., 159; Warner's Case, 2 Va. Cases, 95; Com. vs. O'Neal, 17 Grattan, 582; Britten's Case, 4 McCord (S. Carolina), 256; Hillom's Case, 3 Rich, 434; Regina vs. Sommonsto, 47 E. C. L., 164; Wolverton vs. State, 16 Ohio, 173; Cayford's Case, 7 Greenleaf (Me.), 57; Ham's case, 11 Maine, 391; State vs. Hodgskins, 19 Maine, 155; Jackson vs. People, 2 Scam., 231; Quin vs. State, 46 Ind., 725; State vs. Seals, 16 Ind., 352; Arnold vs. State, 53 Ga., 574; Brown vs. State, 52 Ala., 338; Laughty vs. State, 30 Ala., 536; Com. vs. Jackson, 11 Bush (Ky.) 679; Williams vs. State, 54 Ala., 131.)

The defendant on numerous occasions deliberately admitted and declared that Emily Spencer was his wife. He introduced her (Emily) to various persons as "his wife." He said of her, "she is my wife," and also, "you are my wife." On the same evening at Angus Cannon's he spoke of her again as his "first wife," saying that "he was not going to put his first wife out of the house the first night they were married," &c. He also said that "if he could not dance with his wife Emily, he would not dance with any one." Going back a little, we find that immediately after coming out of the endowment house, on the occasion of the marriage of himself and Carrie Owen, defendant declared to Carrie Owen that the marriage between himself and Emily had already taken place. When he came to the room of Carrie late at night, evidently from the room of Emily, his language indicated the same thing. He afterwards said to Carrie Owen, "I have never admitted to you before that Emily Spencer is my first wife, you are only my second, * * * but there is no witness about to hear what I am telling you." He repeatedly spoke to her of Emily as his first wife.

These samples of defendant's admissions of the first marriage, taken with the surroundings show that they were not idle remarks, but deliberate statements of a fact. In the case at bar the verdict of the jury, however, does not depend alone upon the admissions, confessions or declarations made by the defendant, but said admissions and declarations are corroborated by a variety of circumstances. For example: Prior to the marriage with Emily Spencer, the defendant's conduct showed that such marriage was long contemplated, and that, too, as a first marriage. The defendant, and Emily Spencer, Carrie Owen, and Julia Spencer, called upon John Taylor, the head of the so-called
309 "Church of Jesus Christ of Latter-day Saints," to take the counsel of the head of their church as to the precedence of these three girls if they should marry the defendant. Taylor was the highest authority in the church, and his decision was final and conclusive, as the parties believed. He told them that the order was that the oldest must be the first wife; that the precedence was controlled by the relative ages of the girls, and that Emily Spencer, being the oldest, must be the first wife if they married, and Carrie Owen should be the second wife. Defendant said that he must obey counsel and marry Emily Spencer as his first wife. This was in accordance with the desires of the defendant throughout, although he feigned otherwise to Carrie Owen in respect thereto.

The priority or precedence of Emily Spencer over Carrie Owen was talked of in the presence of the defendant, as appears by Katie Conley's testimony. It was settled and well understood between the parties before they went to the endowment house, that Emily Spencer was to be the first wife and Carrie Owen was to be the second.

The day that Emily was seen in the endowment house was the day agreed upon for her marriage as well as that of Carrie Owen.

The defendant persisted in taking Emily Spencer to the reception party at Angus Cannon's, notwithstanding the protests of Carrie Owen. He claimed that she (Emily) was his wife and he would take her there. Whilst at the reception he treated Emily as his wife, recognizing her as such, taking her part as against Carrie Owen, and reproving Carrie Owen for her course toward Emily, when Carrie's whole conduct was prompted wholly by the very fact of his claiming Emily, instead of herself, to be his first wife.

He led Emily and Carrie to the marriage supper that evening, and otherwise acted toward Emily as his wife.

The place of marriage—of all marriages according to the requirements of the Mormon church, is the endowment house. Persons go there for two purposes, to wit, to take their endowments and to be married. It was necessary that the endowments be taken before marriage. In taking their endowments and in being married a peculiar set of garments or dresses was necessary.

Emily Spencer had taken her endowments prior to that time in a similar house at St. George. She would, therefore, not go to the endowment house in Salt Lake City to take her endowments. She was, however, seen there dressed in this peculiar manner required of parties taking endowments or getting married, and as she could not have been there for the purpose of taking her endowments, the conclusion, in connection with other circumstances, would seem to be inevitable that she was there for the purpose of marriage. She could have been there for no other purpose.

Emily Spencer and defendant were not married on that day after his marriage with Carrie Owen, for he remained with Miss Owen whilst there, and went from the endowment house with her.

Whilst defendant and Carrie Owen were in the endowment house and about to be married, D. H. Wells, the party officiating, called defendant's attention to the fact that it was the first wife's privilege to give this woman (Miss Owen) to him, and that he, defendant, knew it. Wells' knowledge of defendant's prior marriage thus made manifest, did not call from defendant any denial of that marriage, but in effect he admitted it. As Carrie Owen arose to retire, thus showing a disposition to revolt, the defendant simply remarked to Wells, "never mind," and the first wife was not called, although in the building, and the ceremony of marriage between defendant and Carrie Owen proceeded.

After defendant's arrest, but before indictment, he promised to give up the other woman and make Miss Owen his first and only wife, if she would come back to him.

These are some of the facts which corroborate the testimony as to defendant's admission of the first marriage, and they, together with the circumstances immediately surrounding such admission, seem fully to sustain the truthfulness of such admissions.

The point raised, that the second wife cannot be admitted to testify until the first marriage is clearly proven, cannot possibly have any effect in this case; for here the admissions and corroborating circumstances showed clearly the first marriage before the second wife was offered as a witness, the subsequent testimony of Miss Owen, however, confirming them.

The admissions of the first marriage, with corroborating circumstances, ought to be sufficient in Utah, if anywhere; for here there is no statute upon marriage; and to cover up this crime of polygamy, every possible precaution is taken to prevent any proof of said marriages, and direct proof is nearly, if not entirely, impossible. Whatever of ceremony there is, takes place in secret, and such secrecy is enjoined by oaths of great affected solemnity. Such oaths although illegal and void, are generally by those taking them, treated as binding, either from a mistaken notion of their validity or from a fear of the consequences to themselves of a violation thereof. The public demonstrations and the general condition of society here show the praise that is awarded to such as shrink from their duty to uphold and obey the law and divulge these secrets, and such things point unerringly to the ignominy and ostracism which the friends of this crime of polygamy seek to visit upon those who are honorable enough and brave enough to expose those hidden criminalities.

Concealment of the marriage contract is contrary to public policy and injurious to the best interests of society. Publicity affords protection. (Cunningham vs. Burdell, 4 Bradf., 343, 454–5; 1 Bishop's M. and D., §§ 488, 539.) The object of such secrecy, no doubt, is to render the law against polygamous marriages a virtual nullity, by making its execution an impossibility. It is the duty of courts not to uphold any such shield for crime, but to render it wholly unavailing. Polygamy is no more sacred than any other crime, and other crimes are daily in courts of justice established by circumstantial evidence and admissions.

We see no error in the instructions granted, nor do we see that the court below erred in rejecting those of the defendant which were refused, as the law was laid down correctly in the instructions given.

We, therefore, see no error in the verdict and judgment of the court below, and the judgment is therefore affirmed.

(Endorsed:) Filed July 2d, 1879. E. T. Sprague, clerk.

310 And on said 2d day of July, A. D. 1879, was issued a writ of error in said cause, which, with a copy thereof, was on same day filed in the office of the clerk of the said supreme court of Utah Territory, the original of which writ follows, to wit:

311 In the Supreme Court of the United States.

JOHN MILES, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES, DEFENDANT IN ERROR.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the supreme court of the Territory of Utah, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between the United States and John Miles, a manifest error hath happened to the great damage of the said John Miles, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, & full & speedy justice done to the parties aforesaid, in this
311½ behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all the things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws of the United States should be done.

Witness the honorable Morrison R. Wait, Chief Justice of the said Supreme Court of the United States, the 2d day of July, 1879.

[SEAL.] E. T. SPRAGUE,
Clerk of said Supreme Court of Utah Territory.

312 (Indorsed:) In the Supreme Court of the United States. John Miles, plaintiff in error, vs. The United States, defendant in error.

Writ of error. Filed in the office of the clerk of S. C. Utah Territory, this the 2d day of July, 1879. E. T. Sprague, clerk.

313 And on said 2d day of July, A. D. 1879, was issued and filed in said office of the clerk of said supreme court of Utah Territory a citation in said cause, which, with proof of service thereof, follows, to wit:

314 In the supreme court of Utah Territory, June term, 1879.

THE UNITED STATES }
vs.
JOHN MILES. }

The United States of America to the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, District of Columbia, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Utah Territory, wherein John Miles is plaintiff in error and the United States is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice
315 should not be done to the parties in that behalf.

Witness the honorable Michael Schaeffer, chief justice of the supreme court of Utah Territory, this the day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

MICHAEL SCHAEFFER,
Chief Justice of the Supreme Court of the Territory of Utah.
JACOB S. BOREMAN,
PHILIP H. EMERSON,
Associate Justices.

Attest:
[SEAL.]
E. T. SPRAGUE,
Clerk of said Supreme Court, with the seal thereof.

TERRITORY OF UTAH,
County of Salt Lake, ss:

Albert Hagan, being first duly sworn, deposes and says that he is one of the attorneys for said John H. Miles, the plaintiff in error
316 herein; that on the 2d day of July, 1879, he delivered a true copy of the foregoing citation to Hon. Philip T. Van Zile, the United States district attorney for Utah Territory, at the county & Territory aforesaid.

ALBERT HAGAN,

Subscribed & sworn to before me. July 2nd, A. D. 1879.
MICHAEL SCHAEFFER,
City Justice of Utah Territory.

I accept service of the foregoing citation at Salt Lake City, Utah Territory, this 2nd day of July, 1879.

PHILIP T. VAN ZILE,
United States District Attorney for Utah Territory.

(Indorsed:) In the Supreme Court of the United States. John Miles,

plaintiff in error, vs. The United States, defendant in error. Citation. Filed in the office of the clerk of the supreme court this the 2d day of July, 1879. E. T. Sprague, clerk. Tilford, Hagan & Dusenbery, att'ys for plaintiff in error.

317 And on said 2d day of July, 1879, was filed in said office of the clerk of said supreme court of Utah Territory a bond in said cause, of which said endorsements thereon the following is a copy, to wit:

318 In the supreme court of Utah Territory, June term, A. D. 1879.

JOHN MILES, PLAINTIFF IN ERROR,
vs.
UNITED STATES, DEFENDANT IN ERROR.

Know all men by these presents that we, John Miles, as principal, and Elijah M. Weiler, Francis Armstrong, John Connelly, as sureties, all residents of the city and county of Salt Lake and Territory of Utah, are held and firmly bound unto the United States of America in the penal sum of five thousand dollars, for the payment of which, well and truly to be made, we do bind ourselves, our and each of our heirs, administrators, and assigns, jointly and severally, firmly by these presents. Witness our hands and seals this 2d day of July, A. D. 1879.

The condition of the above obligation is such that whereas the above bounded John Miles was, at the April term of the district court of the third judicial district of the Territory of Utah, A. D. 1879, convicted upon an indictment for bigamy, and sentenced to imprisonment
319 for five years in the penitentiary at Lincoln, Nebraska, and to pay a fine of one hundred dollars to the United States;

And whereas said judgement of the said district court was, on appeal, affirmed by the supreme court of the Territory of Utah, at the June term thereof, and judgment to that effect rendered by said supreme court on the 2d day of July, 1879;

And whereas the said John Miles has taken an appeal by writ of error from the said judgment of said supreme court to the Supreme Court of the United States, and desires a stay of proceedings in said cause until the same can be heard and determined by the Supreme Court of the United States;

And whereas the said supreme court of the Territory of Utah has fixed the amount of the bond on the stay of proceedings at five thousand dollars:

Now, therefore, if the said John Miles shall at all times hold himself in readiness to abide by any order or judgment of said appellate court made herein, and yield himself in obedience thereto and appear
320 whenever he shall be required so to do, and in all respects comply with and obey every order or judgement of said appellate court, and pay all costs of appeal, if said judgement be affirmed or said appeal dismissed, then this obligation to be null and void, but otherwise to remain in full force and virtue.

JOHN MILES. [SEAL.]
ELIJAH M. WEILER. [SEAL.]
FRANCIS ARMSTRONG. [SEAL.]
JOHN CONNELLY. [SEAL.]

Signed and sealed in presence of—
JOHN D. WHITE.

TERRITORY OF UTAH,
County of Salt Lake, ss:

Elijah M. Weiler, Francis Armstrong, John Connelly, being first duly sworn, each for himself, and not one for the other, deposes and says that he is a freeholder & resident of Salt Lake County, Utah Territory; that he is worth the sum in the above obligation specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

ELIJAH W. WEILER.
FRANCIS ARMSTRONG.
JOHN CONNELLY.

Subscribed & sworn to before me this 2d day of July, A. D. 1879.
[SEAL.] JOHN D. WHITE,
Notary Public.

321 Approved by the sup. court of Utah Territory July 2d, 1879.
MICHAEL SCHAEFFER, *C. J.*

(Indorsed:) United States vs. John Miles. Supersedeas bond. Filed July 2d, 1879. E. T. Sprague, clerk.

322 And afterwards, on the 10th day of July, A. D. 1879, was filed in the office of the said clerk of said supreme court of Utah Territory an assignment of errors in said cause, of which the following is a copy, to wit:

323 In the Supreme Court of the United States.

JOHN MILES, PLAINTIFF IN ERROR,
vs.
UNITED STATES, DEFENDANT IN ERROR.

Now comes said plaintiff in error and assigns the following errors committed by the supreme court of the Territory of Utah in affirming the judgement of the district court of the third judicial district of Utah Territory in this case, for the reasons following, to wit:

1. The court erred in allowing the attorney for the United States to ask the jurors or any of them if they believed in polygamy or that he or they belonged to the Mormon church, or in allowing any questions as to the religious belief of any juror.

2. The court erred in appointing triers to try the challenge of the United States district attorney to any and all the jurors mentioned herein in the statement for a new trial.

3. It was error for said triers to inquire into or consider the religious belief of any of the jurors.

324 4. The court erred in allowing witness Mrs. W. J. Foreman to relate a conversation between John Miles and Caroline Owens in order to prove a marriage with Emily Spencer, and the court erred in allowing the question "I ask if you heard this said by Miss Owens, 'If she is your wife, who am I,'" and also allowing the same questions to be asked of witness Miss Foreman.

5. The court erred in allowing in evidence any declarations or admissions of Miles, made at the house of Angus Cannon, on the evening of the alleged dinner party.

6. The court erred in ruling that the mere calling a woman "wife" by defendant Miles was admissable to prove a marriage with her.

7. The court erred in allowing the questions to witness D. H. Wells as to the description of the dress or robes of persons visiting the endowment house.

8. The court erred in allowing witness Caroline Owens to be sworn, as she was the alleged second wife and so far as appears the wife of defendant Miles, and no first marriage or other marriage of defend-
325 ant Miles was proven to the court or jury; that admissions or declarations alone cannot prove a marriage in a case such as the one at bar, and that Caroline Owens was an incompetent witness and disqualified from testifying at this stage of the case.

9. The court erred in excluding the proposed testimony of witness Mrs. Sarah Cannon, when the defence proposed to show that there was a marriage with Caroline Owens, and that defendant, John Miles, and Caroline Owens, as husband and wife, slept together at the house of witness on the night of the marriage, and the court erred in excluding the testimony of the same witness that Caroline Owens sent for defendant Miles as her husband and that she said he was her husband.

10. The court erred in its instructions to the jury, and said instructions are against law.

11. The court erred in giving the first request asked for by the prosecution.

12. The court erred in giving requests Nos. 2, 3, and 4, asked for by the prosecution.

13. The court erred in refusing and failing to give instructions
326 Nos. 1, 2, 3, 4, 6, 7, 8, 9. 10, 11, and 12, asked for by the defence.

14. The evidence was insufficient to sustain the verdict, and the same was against the evidence in this, that in prosecutions for bigamy the mere confession or admissions or declarations of a party are not alone sufficient evidence of the first marriage, but there must be proof of a marriage, in fact: otherwise the defendant is entitled to a verdict of not guilty. The evidence was also insufficient in this, that the name of the person with whom the defendant Miles was alleged to have contracted the second marriage appears to be Caroline Owen Male, and not Caroline Owens as charged in the indictment, and the evidence shows that defendant Miles married Caroline Owen Male and not Caroline Owens.

15. There was no evidence showing the first marriage, or a marriage in fact with Emily Spencer.

The plaintiff in error therefore prays that the judgement of said supreme court of Utah Territory may be reversed and that a
327 mandate issue from this court directing said supreme court of said Territory to reverse the judgment of the said district court in all things & order a new trial herein.

E. D. HOGE,
TILFORD & HAGAN, &
W. DUSENBURY,
Att'ys for Plaintiff in Error.

(Indorsed:) In the Supreme Court of the United States. John Miles, pl'ff in error, vs. United States, def't in error. Assignment of errors. Filed in the office of the clerk of the supreme court of Utah Territory, July 10, 1879. E. T. Sprague, clerk.

328 TERRITORY OF UTAH,
County of Salt Lake, ss:

I, E. T. Sprague, clerk of the supreme court of said Territory of Utah, do hereby, in obedience to the annexed writ of error, return to the Supreme Court of the United States said original writ; the citation issued

thereon, with proof of service of the latter; and a transcript of the record and proceedings in and of said supreme court of said Territory in the cause in said writ mentioned; also of the opinion of said last named court, the supersedeas bond, and assignment of errors in said cause; and I hereby certify that said annexed transcript of the record and proceedings, opinion, bond, and assignment of errors is a full, true, correct, and complete copy of the several originals thereof on file or of record in my office.

Witness my hand and the seal of said court, this 19th day of September, A. D. 1879, at Salt Lake City, in said Territory.

[SEAL.] E. T. SPRAGUE,
Clerk of Supreme Court of Utah Territory.

(Indorsement on cover:) No. 592. John Miles, plaintiff in error, vs. The United States. Utah Terr'ry supreme court. Filed 13th October, 1879.

SUPREME COURT U.S.
FILED
DEC 27 1880
JAMES H. McKENNEY, Clerk

SUPREME COURT

OF THE

UNITED STATES.

JOHN MILES,
Plaintiff in Error.
vs.
UNITED STATES.
Defendant in Error.

ERROR TO SUPREME COURT OF UTAH.

BRIEF FOR PLAINTIFF IN ERROR.

E. D. HOGE,
W. N. DUSENBERRY,
ARTHUR BROWN,
For Plaintiff in Error.

Supreme Court of the United States.

JOHN MILES,
Plaintiff in Error.
vs.
UNITED STATES.
Defendant in Error.

} ERROR TO SUPREME COURT OF UTAH.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF CASE.

Plaintiff in error was indicted for the crime of bigamy under the United States statute (Revised Statutes, section 5352), in the Third District Court of Utah, at Salt Lake City. He was convicted; he appealed to the Supreme Court of the Territory, where judgment was affirmed. That judgment is now brought here for review on writ of error.

On the trial it appeared that defendant had been engaged to marry one Carrie Owens, or Carrie Owens Maile, in England, and being about to emigrate to Utah, they had de-

ferred the ceremony until their arrival at Salt Lake, where they were married in the Endowment House, on the 24th day of October, 1878.

The prosecution claimed that on the same day, but immediately preceding this marriage, defendant married another woman, called Emily Spencer, and seek to substantiate their case, by offering proof that Defendant, Spencer, and Owens, consulted the head of the Mormon Church a few days before the marriage, on the proper order of marriage, in cases where one man married several wives on the same day, and received information that usually the oldest came first; that Emily was supposed to be older than Carrie, and therefore the prosecution claim the inference that the marriages were consummated, and in the order of age.

Evidence was also offered that defendant spoke of Emily as his wife, and introduced her as such, and that he told Carrie, as she testifies, that Emily was his first wife.

The principal questions involved, are:

1.—The exclusion from the jury of all persons of Mormon faith.

2.—What evidence is receivable and what sufficient to prove a marriage in cases of bigamy?

3.—Did the Court rule correctly in permitting the person called Carrie Owens to testify as a witness?

4.—The description of the person alleged to be second wife is insufficient. Her name is stated in the indictment to be Caroline Owens; her true name was Caroline Owens Maile.

5.—The definition of reasonable doubt given by the District Judge is erroneous in stating the weight of evidence necessary to convict to be the conviction that a prudent man would act upon in matters of the highest concern and importance to his own dearest personal interest, thus substituting the rule in civil cases for that in criminal.

ASSIGNMENTS OF ERROR.

The specific assignments of error are as follows:

1.—The Court erred in allowing the Attorney for the United States to ask jurors if they belonged to the Mormon Church.

2.—The Court erred in appointing triers to try the challenge of the Attorney of the United States against the jurors.

3.—The Court erred in permitting triers to inquire into the religious belief of jurors; and in permitting Oscar Dunn to be excluded from the jury box on the report of triers after it appeared on the examination in Court that no cause of challenge existed against him.

In pe mitting Robert Patrick to be excluded from the jury box by triers, for his religious belief.

In excluding Midgley from the jury box.

4.—The Court erred in allowing witness Mrs. W. J Foreman to relate a conversation between John Miles and Caroline Owens, in order to prove a marriage with Emily Spencer, and the Court erred in allowing the question "I ask if you heard this said by Miss Owens, 'If she is your wife, who am I?'" and also allowing the same questions to be asked of witness Miss Foreman.

5.—The Court erred in allowing in evidence any declarations or admissions of Miles, made at the house of Angus Cannon, on the evening of the alleged dinner party.

6.—The Court erred in ruling that the mere calling a woman "wife" by Defendant Miles was admissible to prove a marriage with her.

7.—The Court erred in allowing the questions to witness D. H. Wells as to the description of the dress or robes of persons visiting the Endowment House.

8.—The Court erred in allowing witness Caroline Owens

to be sworn, as she was the alleged second wife, and so far as appears, the wife of Defendant Miles, and no first marriage or other marriage of Defendant Miles was proven to the Court or jury; that admissions or declarations alone cannot prove a marriage in a case such as the one at bar, and that Caroline Owens was an incompetent witness and disqualified from testifying at this stage of the case.

9.—The Court erred in excluding the proposed testimony of Witness Mrs. Sarah Cannon, when the defence proposed to show that there was a marriage with Caroline Owens, and that Defendant John Miles, and Caroline Owens, as husband and wife, slept together at the house of witness on the night of the marriage, and the Court erred in excluding the testimony of the same witness, that Caroline Owens sent for Defendant Miles as her husband, and that she said he was her husband.

10.—The Court erred in its instructions to the jury, and said instructions are against law.

11.—The Court erred in giving the first request asked for by the prosecution.

12.—The Court erred in charging the jury as follows:

"In order, however, to prove this fact (marriage), it is not necessary that the prosecution should prove an actual marriage by one who was an eye-witness of the ceremony, but proof that the prisoner has declared himself, and has been reputed to be married, is all that is necessary and will support a conviction."

In charging the jury:

"The declarations of the prisoner and the fact that he has recognized, or recognized and cohabited, with the woman alleged to be his wife, this is only evidence tending to prove an actual marriage, and it is for you to decide whether the facts proven are sufficient to warrant you in finding that the prisoner was in fact married to the alleged wife."

13.—The Court erred in charging the jury in the third request, to charge.

"The fact that the defendant married Miss Emily Spen-

cer, may be proven like any other fact in the case, by the admissions of the defendant, or by circumstantial evidence; it is not necessary that it be proven by witnesses who were present at the ceremony."

14.—The Court erred in giving the fourth request of the prosecution and in charging the jury:

"And so in this case you are at liberty to consider the testimony of Miss Caroline Owens, if you find from all the evidence in the case that she is a second and plural wife, and give it all the weight you think it entitled to, and may use it to prove the first marriage alleged, to-wit: The marriage of defendant and Emily Spencer, or any other fact which in your opinion is proven by her testimony."

15.—The Court erred in refusing to give request No. 2 on the part of defense.

16.—The Court erred in refusing to give request No. 3 on the part of defense; also in refusing Nos. 4 and 6.

17.—The Court erred in refusing to give requests Nos. 7 and 8 on the part of defense.

18. The Court erred in refusing request No. 9 on part of defense, and in charging the jury by way of defining reasonable doubt:

"Proof beyond a reasonable doubt is such as will produce an abiding conviction in the mind to a moral certainty, that the fact exists that is claimed to exist."

"That is, unless he be so convinced by the evidence, no matter what the class of the evidence, of the defendant's guilt, that a prudent man would feel safe to act upon that conviction in matters of the highest concern and importance to his own dearest personal interests."

19.—The evidence was insufficient to sustain the verdict, and the same was against the evidence in this, that in prosecutions for bigamy the mere confession or admissions or declarations of a party are not alone sufficient evidence of the first marriage; but there must be proof of a marriage, in fact; otherwise the defendant is entitled to a verdict of not guilty. The evidence was also insufficient in this, that the

name of the person with whom the Defendant Miles was alleged to have contracted the second marriage appears to be Caroline Owen Maile, and not Caroline Owens, as charged in the indictment, and the evidence shows that Defendant Miles married Caroline Owen Maile, and not Caroline Owens.

20.—There was no evidence showing the first marriage, or a marriage in fact with Emily Spencer.

BRIEF.

I.

Many of these specifications can be considered together. We allege that the Court erred in permitting the inquiries put to persons summoned as jurors, viz: Dunn, Patrick and Midgely, as found in Record, pp. 3 to 8 inclusive. Assignments Nos. 1, 2, 3.

The whole examination and ruling of Court show that it was the deliberate intention to exclude every man from the jury who was a Mormon, and only to have for jurors men who, excited against Mormons and Mormonism, would strain their consciences to convict.

This was the trial of a question that excited the whole community. Nine-tenths of the people were Mormons; the other tenth were people anxious to convict Mormons. The Court says deliberately, "We will prevent any of the majority sitting on the jury, and permit the few to sit in judgment."

These three men all answered fairly. Take Midgely, at page 7; he says he will fairly try according to the evidence, and convict under the charge of the Court. That is

not enough; he is asked if he believes in the Mormon church! He belongs to it; the Court excludes him by throwing the responsibility on three triers.

What right had the Court or counsel to inquire into the religious belief of the juror?

If an Episcopalian, Methodist, Presbyterian or Unitarian is on trial for crime, does it exclude all others of like faith from the jury?

Why should not the same rule be extended to Mormons as to persons of other religious denominations?

It would hardly do at this day to exclude a Mason from the jury because a fellow Mason was on trial for crime.

Neither is the rule any different when triers are called in. The judge cannot commit error by placing the responsibility on the shoulders of triers. We have the evidence before us on which the triers were bound to act. That is insufficient to exclude the jurors.

II.

The next question involved is the question of the proper evidence by which to prove the first marriage in bigamy. We rely on the 4th, 5th, 6th, 7th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 19th and 20th assignments. They all relate to the same subject. We claim the Court erred in receiving evidence that defendant introduced Emily Spencer as his wife, and spoke of her by the term "wife," Record, pp. 20, 24, 26, and 27; and in charging the jury as requested by prosecution in second and third requests.

By the law of Utah, a common law marriage is valid, although no particular form is prescribed for such an one, yet it must be formal to this extent, that there must be a present taking of each other as husband and wife, and words must be used signifying such present purpose. It must be *verba de presenti* and not *verba de futuro.*

This is necessarily a formality.

Hutchins v. Kimmel, 31 Mich., 126.
Mowry v. Meister, 6 Otto, 76.
Commonwealth v. Stump, 53Penn., St., 136.

Speaking of a woman as a "wife" is not a marriage by any law.

Cohabitation and recognition of the relationship by word and act, is not a marriage by any decision.

The case of Hutchins v. Kimmel, *supra*, goes as far or farther than any other in sustaining marriages at common law, but even by that case, there must be the formality of a present taking each other for husband and wife.

The next step in this case is to determine by what evidence such a marriage may be proven. The district judge said to the jury: "That proof that the prisoner has declared himself, and has been reputed to be married, is all that is necessary and will support a conviction."

Record, p. 96.

We allege that is error.

"Reputation" is hearsay, and is never admissible by any authority in bigamy cases.

It was doubly improper to charge the jury that they might take it as one element of a marriage, when the prosecution had not, and had not dared to offer any proof of marriage by *reputation*.

Why did the District Judge charge the jury to consider reputation, when no reputation had been offered or existed? His charge could have no good effect; it must certainly mislead; perhaps the jury thought from that, they might take such street talk as they might have heard outside the jury box. Certainly there was nothing in the evidence to which such charge could have the slightest pertinence.

Is proof that defendant "declared himself married," proof of marriage?

This is a mere declaration of relationship, and is considered sufficient when the relationship is the material fact.

But here relationship is not the fact to be proven, but the marriage itself by which the relationship was formed, hence declarations of the relationship are secondary evidence of the first fact to be proven.

Even the charge of the Court a few sentences later, contradicts the idea that mere relationship of husband and wife will prove a marriage, (Record, fol. 280), when the District Judge used the language of the Court in Com. v. Jackson, 11 Bush Ky., 679, which, although cited in the Court below, does not sustain charge No. 2, given at the request of the prosecution, nor does the subsequent modification of the charge by the Court cure the error. In that modification he does not retract from the former charge, but merely states in other language the rule as he understood it. He had previously explicitly told the jury that reputation and acknowledgement of the relationship would justify a conviction. The jury could not weigh all parts of the charge to see some slight modification.

But further, we allege the modification itself was error. We claim that admissions of the fact of marriage are not sufficient to justify a verdict of guilty of bigamy.

This is a question much discussed on authority. Judges and advocates have always found the weight of authority on the side that suited their peculiar notions, or especial needs. It is not uncommon to find cited in the column of weight, authorities directly opposed to the proposition they are cited to sustain.

We call the attention of the Court to some of the authorities.

In California the code and practice are substantially the same as Utah. The latter has borrowed of the former its methods of procedure, its practice, a great deal of its jurisprudence and its rules of evidence, and its criminal code verbatim.

The law of California, then, is particularly instructive.

Case v. Case, 17 Cal., 598, is the leading authority from that State. It was a suit for divorce on the ground of adultery

with a woman he had married after the relationship with plaintiff had ceased.

The defendant denied the marriage with plaintiff.

The proof showed that the parties had cohabited as man and wife for years, and that defendant had introduced her into society as his wife, and called her and recognized her as such.

The Court below and above both determined this evidence was insufficient. The Court say: "We think that under the circumstances an actual marriage should have been proved. The general rule that in actions of this nature the marriage may be inferred from cohabitation of the parties, we do not understand to be applicable. We cannot indulge this inference without presuming that the defendant has been guilty of the crime of bigamy, and the fact that it involves such a presumption is sufficient to repel it."

This case is cited by Wharton as an authority the other way—for proving marriage by cohabitation and admission. And that author adds "this by statute."

2 Wharton. Cr. 2630 n.

At page 602, the California Court say of that statute: "The most that could have been contemplated was the adoption of a rule precluding the necessity of the introduction of documentary or record evidence."

Thus enforcing the rule for full proof of marriage in spite of the statute.

This case has been approved and followed.

People v. Anderson, 26 Cal. 133.

In Massachusetts the old rule, before changed by statute, was the same.

Commonwealth v. Littlejohn, 15 Mass.
Commonwealth v. Norcross, 9 Mass., 492.

In New Hampshire it seems to be followed.

State v. Windly, 14 N. H., 495.

In New York a vast array of opinions have been rendered by the early courts and by the later courts, all concurring that where marriage is an element of crime, it

must be proven by an eye witness or by a record. These decisions are familiar, and quoted usually on this subject.

People v. Humphrey, 7 Johns, 314.
Gahagan v. People, 1 Parker, 378.
Clayton v. Wardell, 4 N. Y., 235, 238.
Hayes v. People, 25 N. Y., 396.

In Vermont an early decision recognized the doctrine of People v. Littlejohn, as the true rule.

State v. Rood, 12 Vt., 399.

In a late case, State v. Horn, 43 Vt., 20, the defendant claimed a foreign marriage was performed in jest. The prosecution produced a certificate from a person acting as magistrate, and a letter from defendant admitting the marriage in earnest. The Court held the letter admissible, to deny defense of jest, but that the proof taken as a whole, was insufficient, thus practically deciding that respondent should not be convicted on his admission solely, notwithstanding the fact that Vermont had adopted the Massachusetts act.

In Connecticut, admissions are not sufficient evidence of marriage.

State v. Roswell, 6 Conn., 446.

In Michigan, a leading case has settled the law in an able opinion, that the first marriage in a bigamy case cannot be proven by admission, for the reason that it is proving the *corpus delicti* in that manner which is contrary to elementary principles of the criminal code.

People v. Lambert, 5 Mich., 349.

I find authorities from Pennsylvania often quoted as holding that marriage may be proven by admissions.

I believe the law of that State to be otherwise.

Forney v. Hallacher, 8 S. & R., 159, usually cited, is only to the point that in a civil action defendant's admission that plaintiff was married, may be received.

In "Yardley's Estate," 75 Penn. St., 207, although a civil case, involving inheritance, the court held a marriage

insufficiently proven where the parties lived and cohabited together for years, and deceased had admitted the relation by addressing envelopes to her as his wife.

In Commonwealth v. Stump, 53 Penn, St., 134, which was another case of contested inheritance, the court held cohabitation and reputation, and proof that the parties lived together under a mutual agreement to be husband and wife to be insufficient proof of marriage.

The Pennsylvania text writers say that cohabitation and admissions are insufficient to prove marriage.

1 Wharton on Ev., 85, 6.

In Wisconsin, the rule has been established that mere introductions of a person as a wife, speaking of her as such, or any other admission of the relationship, is insufficient to prove a marriage, though accompanied by cohabitation.

West v. State, 1 Wis. 218.

In a later case the rule is laid down even more strictly, and it was held a foreign marriage could not be proven by a deliberate confession.

Weinberg v. State, 25 Wis., 370.

In Minnesota the strict rule is adhered to.

State v. Armstrong, 4 Minn., 335.

American text writers and judges lay down the law of England in different ways on this subject as their own views may differ.

Russell, however, distinctly says that in bigamy the first marriage cannot be proven by admissions.

1 Russel on Crimes, 315.

The case of Rex. v. Simonsto, 1 Car. and Kir., so often quoted here, has never been regarded as the law there, and, in that case, the prisoner was acquitted. But the strict rule, requiring a marriage in fact as contradistinguished from the relationship, is adhered to.

Regina v. Flaherty, 2 C. & K, 781.
13 M. & W., 261.

It is believed the previous decisions of this court, so far as they go, favor the strict rule of a marriage in fact, as against confessions of the relationship.

Patterson v. Gaines, 6 How., 550.
Gaines v. Relf, 12 How,, 553.
Blackburn v. Crawford, 3 Wal. 174.

On the other hand, some of the States have sustained convictions where the marriage itself, and not the mere relationship, was deliberately admitted or confessed.

In Ohio, the leading State on that side of the question, it was held in an early and important case, that confessions should be received of the fact of marriage, and not of the mere relationship; but the court say that "The confession thus made should not be relied on, and held by the jury when unsupported, sufficient to work a conviction."

Wolverton v. State, 16 Ohio, 173.

The later cases merely affirm the doctrine of this one without reconsidering it.

In Maine, an early case seems to hold that confessions of the fact of marriage would be sufficient.

Cayford's Case, 7 Greenleaf, 57.

In State v. Hodgskins, 19 Maine, 155, the court appears to adhere to the strict rule that complete proof of the marriage must be made.

The law of that State on the subject is perhaps unsettled.

In Indiana, by a late decision, the most lax rule has been permitted on the supposed weight of authority, the learned judge quoting as sustaining his view:

England(?), Canada(?), Maine(?), Pennsylvania(?), Delaware, Virginia, South Carolina, Georgia, Alabama, Texas, Ohio(?), Iowa(?), California(?).

All the judge could find on the other side were Massachusetts, Minnesota and New York.

He is frank enough, however, to admit that all he knows about it, he gleaned from a note to Wharton's Criminal Law, and another note to Chitty's Criminal Law. He was

evidently ignorant of the decisions of States nearest him, Michigan and Wisconsin, and still more so of more than half of those he imagined sustained his view.

Squire v. State, 46 Ind., 459.

Little weight should be attached to the opinions of Courts represented by such judges.

I have not examined the decisions of Mexico or Mississippi. It is said that the courts of a few Southern States convict men of bigamy on general admissions. Perhaps so. Quite likely.

The rules of law of some courts are designed to convict the innocent and to release the guilty.

Beyond the mere decisions of courts there is a reason founded in human nature, and the customs and habits of men, that ought to have some weight. The crime charged is that of having twice contracted a marriage, not of having twice committed illicit intercourse.

So lightly do legislatures regard the latter moral iniquity, that it is not a crime or misdemeanor in hardly any State of this Union, whereas the same States punish bigamy with heavy penalties. We must not confound these two things. Men and women, when once guilty of the moral offence of illicit intercourse, will often cloak it under some form of pretended marriage relation. If a man registered his name at a hotel with a woman as his wife, it would be sufficient proof of a marriage under the rulings of this case to convict him of bigamy.

The *corpus delicti* can never be proven by mere admission. The law of bigamy should be no exception to the rule.

Marriages cannot be conducted in secret. There must be some eye witnesses, and the law requires their production.

What evidence of marriage does this proof show?

There is nowhere even an *admission* of the *fact* of *marriage*. The strongest proof that was produced, even from the mouth of the witness they call Carrie Owens, was of the relationship, not of the marriage itself.

Record, fols. 149, 147.

Even take the summary of the Court below:

Record, fol. 308, p. 108.

Though, as we think, unwarranted by the evidence, they fall far short of deliberate confessions required in Wolverton v. State, or the amount of proof required in any of the States cited.

Leaving it to the jury to determine from all circumstances (mostly imaginary), was an invitation to them to find defendant guilty without evidence, upon their prejudices; the result would have been the same if the charge had been given before any evidence was introduced.

But if we take out the testimony of the so-called Carrie Owens, even the proof by admissions is gone. Was her testimony admissible?

III.

We allege that the Court erred in leaving the decision of the admissibility of the testimony of her they call Carrie Owens to be determined by the jury. Assignments Nos. 8 and 14.

It is the duty of the Court to admit or reject evidence when offered. He cannot escape the responsibility or shirk the burden. He cannot say, "I will ask the jury, and let them determine whether they think it should be admitted." Least of all, can he say to the jury, "Receive the testimony, and after you have heard it, if you like it, you may weigh it to see if it had better be considered as testimony in the case." Yet this is what the trial judge did in this case.

It appeared on the face of the indictment that Carrie Owens was the wife of defendant. Under the Utah statutes she could not be a witness until it had been established, *i.e.*, proven that there was a prior wife, rendering the marriage with Carrie void.

The Compiled Laws of Utah, Sec. 1604, page 506, provides: "A husband shall not be a witness for or against

his wife, nor a wife a witness for or against her husband; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage."

Here was a marriage in form, admitted and conceded to be sufficient on both sides. The wife could not give evidence of communication until it had been judicially established that she was not his wife.

Record, p. 54, fol. 149.

By some authorities the judge could have determined that a prima facie case had been made out, and admitted testimony on that theory. But no such decision was made in this case.

The case of proving a lost paper would be analagous to the rule of these decisions. Before evidence of the contents could be given, the Court must first judicially determine that he is satisfied the paper was lost. The jury can never determine the preliminary fact.

Before this witness could be sworn, and these communications received, the judge must render his judgment, that is, his judicial opinion, that the first marriage had been established.

But he did not like to take the responsibility of saying that there was a prima facie case, and so said he would leave it to the jury. This course was not warranted by any authority. The weight of reason and authority says that she is barred from testifying. She can only be rendered competent when it is proven beyond a reasonable doubt that he is guilty of bigamy, and that can only be established by the verdict of the jury. So the second wife can never be a witness until after conviction.

"If the proof of the first marriage were doubtful, and the fact were controverted, it is conceived that she would not be admitted."

1 Greenleaf on Ev. sec. 339.
1 Russ. on Crimes, 218.

"Nor ought she to be admitted at all, if the first marriage is still a point in controversy."

3 Greenleaf on Ev. 206.

In his charge, the court tells the jury that if they find from ALL the evidence in the case that she was a second wife, the jury may consider her evidence.

Record fol. 282.

That is, first consider her evidence, then admit it if she can swear to anything. Such a rule dispenses with all restrictions and statutes of competency.

Suppose no other testimony but her own was offered (and little else was offered in this case), she could at once relieve herself of the statutory prohibition, and convict her husband. It is as impossible that this is the law as that a man can lift himself up by the boots. The exclusion of the testimony of a wife is founded on principles of public policy. She is excluded, no matter what she can swear to. She is excluded after proof of the marriage, until it appears by other evidence, that is, by evidence outside of her own, that the marriage is void.

IV.

We allege as error that the description of the woman named in the indictment is not sufficiently specific. It appears that Carrie Owens is not Carrie Owens at all, but a Miss Maile. This is not a proper description, and the law should be as of any other error of description in an indictment. It was a material element of the crime to properly describe her. If the pleader in an indictment makes a description of any material element, he is bound to prove it as laid.

1 Greenleaf on Ev. sec. 65.

This was a material part of the description, and misled the defendant.

3 Greenleaf on Ev. sec. 205.
Rex v. Deely, 1 Moody, C. C. 303.
" 4 C. & P. 579.

V.

The Court erred in attempting to define "reasonable doubt." Any definition is error. The words are their own best definition. No judge has ever attempted to define the term without weakening, and injuring the effect of the plain simple English—reasonable doubt. To say that it is "an abiding conviction in the mind to a moral certainty" is to substitute a subtle, metaphysical, hidden meaning, that no two men ever understood alike, for a plain expression that all men understand alike.

To say that to convict beyond a reasonable doubt is to act upon that conviction upon which men act in their own highest concerns of life, is to substitute the civil rule for the criminal. Men act on the doctrine of chances. If the chances preponderate, they follow that preponderance. Men are obliged to work, to act, to do something. They cannot stand still. They always act as the balance changes in their affairs, but jurors are not obliged to convict, they can fail to find any verdict. They cannot convict unless the scale not only preponderates, but fixes the conviction beyond any reasonable doubt. It is believed the definitions of the judge are unsound and unsupported.

Hamilton v. People, 29 Mich. 173.
Nevada v. Rover, 11 Nev. 343.
People v. Brannon, 47 Cal. 96.
People v. Ah Sing, 51 Cal. 373.

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OFFICE SUPREME COURT U.S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1880.

JOHN MILES
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ERROR TO SUPREME COURT OF UTAH.

GOVERNMENT BRIEF.

Indictment for bigamy.

The rehearsal of the evidence in the bill of exceptions makes up a voluminous record, upon which fifteen errors were assigned below (Record, 102–103, 113–114), which we assume, in anticipation of the plaintiff's brief, will be again insisted upon here. Nevertheless, the legal propositions really involved in this case may be reduced to a few in number, simple in character, mainly dependent for determination upon the statutes of Utah.

I.

The first three assignments, relating to the method of empannelling a jury, will be considered together. They are as follows:

"1. The court erred in allowing the attorney for the

United States to ask the jurors, or any of them, if they believed in polygamy, or if he or they belonged to the Mormon Church, or in allowing any questions as to the religious belief of any juror." (Record, 113.)

"2. The court erred in appointing triers to try the challenge of the United States district attorney to any and all the jurors mentioned herein in the statement for a new trial." (*Id.*)

"3. It was error for the triers to inquire into or consider the religious belief of any of the jurors." (*Id.*)

The criminal procedure of Utah is regulated by an act passed for that purpose, approved February 22, 1878, taking effect from the tenth day of the succeeding month.

The following are the pertinent provisions of that code:

"SEC. 224. A challenge is an objection made to the trial jurors, and is of two kinds: (1) to the panel; (2) to an individual juror." (Laws of Utah, A. D. 1878, Title VI, chap. 1, p. 109.)

"SEC. 235. A challenge to an individual juror is either (1) peremptory, or (2) for cause." (*Id.*, p. 110.)

"SEC. 239. A challenge for cause may be taken by either party. It is an objection to a particular juror, and is either, (1.) General—that the juror is disqualified from serving in any case; or, (2.) Particular—that he is disqualified from serving in the action on trial." *Id.*, pp. 110, 111.)

"SEC. 241. A particular cause of challenge is:

1. For such a bias as, when the existence of the facts is ascertained, in judgment of law, disqualifies the juror, and which is known in this act as implied bias.

2. For the existence of a state of mind on the part of

the juror which leads to a just inference, in reference to the case, that he will not act with entire impartiality, which is known in this act as actual bias." (*Id.*, p. 111.)

"SEC. 244. In a challenge for implied bias, one or more of the causes stated in section 242 [consanguinity, &c.], must be alleged. In a challenge for actual bias the causes stated in section 241 [*supra*] must be alleged. In either case the challenge may be oral, but must be entered on the minutes of the court." (*Id.*, 112.)

"SEC. 245. The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon as are prescribed in section 230,* except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the ground of challenge." (*Id.*)

"SEC. 246. If the facts are denied, the challenge *must* be tried as follows: (1.) If it be for implied bias, by the court; (2.) If it be for actual bias, by triers." (*Id.*)

"SEC. 247. The triers are three impartial persons, *not on the jury panel*, appointed by the court. All challenges for actual bias *must* be tried by three triers thus appointed, a majority of whom may decide." (*Id.*)

SEC. 248. The triers must be sworn generally to inquire whether or not the several persons who may be challenged are biased against the challenging party,

* "SEC. 230. If the *sufficiency* of the facts alleged as ground of the challenge is denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered on the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true." (Laws of Utah, A. D. 1878, Title VI, chap. 1, p. 109.)

and to decide the same truly, according to the evidence." (*Id.*)

"SEC. 249. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and must answer every question pertinent to the inquiry." (*Id.*, 113.)

"SEC. 250. Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge." (*Id.*)

SEC. 251. On the trial of a challenge for implied bias the court must determine the law and the fact, and must either allow or disallow the challenge, and direct an entry accordingly, upon the minutes." (*Id*)

"SEC. 252. On the trial of a challenge for actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if, in their opinion, the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial; and that if, from the evidence, they believe him free from such bias, they must find the challenge not true; that a hypothetical opinion unaccompanied with malice or ill-will, founded on hearsay or information supposed to be true, is of itself no evidence of bias sufficient to disqualify a juror. The court can give no other instruction." (*Id.*)

"SEC. 253. The triers must thereupon find the challenge either true or not true, and their decision is final. If they find it true, the juror must be excluded." (*Ib.*)

These statutes were within the legislative power of the Territory, and must control the empanneling of jurors in the courts of Utah. (Clinton *v.* Englebrecht, 13 Wall., 434; United States *v.* Reynolds, 98 U. S., 145.)

They superseded all former, or common law, methods. (State *v.* Knight, 43 Maine, 1.)

1. The district attorney had the right to question the jurors in order to ascertain whether or not there was ground upon which to base a challenge for favor, or actual bias, or for a peremptory challenge. (Watson *v.* Whitney, 23 Cal., 379; 98 U. S., 145; Record, 5, middle, "By the Court.")

In his late Digest of the Law of Evidence, Stephen says, page 1: "Fact means (1) everything capable of being perceived by the senses; (2) every mental condition of which any person is conscious," as "That a man holds a certain opinion," &c. It was a material fact.

At any rate, no exception will lie, because the prisoner could not possibly be injured or aggrieved by the questions put as to the polygamous practices or beliefs of the jurors.

Indeed, he could not be aggrieved by the *exclusion* of any particular individual from the jury, as he might be by the improper *acceptance* of one. All he is entitled to is an unbiased jury; and that he had. In legal contemplation, one unbiased man is as good as another for him. He is not entitled to have Oscar Dunn or Robert Patrick, or any other particular person, upon the panel. As the Vermont court once observed, in passing, "no occasion *can* occur to render it necessary for one juror to sit on the panel in preference to another." (Phelps *v.* Hall, 2 Tyler, 402, bottom; State *v.* Williams, 30 Maine, 486, middle.)

I do not believe the instance can be found of setting aside a verdict because a particular man was excused from serving on the jury.

Again: the jurors were challenged for actual bias. The facts upon which this challenge was based were denied. Thereupon the issue *had* to be determined by triers. (Secs. 246 and 247.) The triers, upon evidence *not* objected to nor excepted to, found the challenge true, "and their decision is final. If they find it true, the juror *must* be excluded." (Sec. 253.) How could the prisoner or his cause be hurt by the fact that the questions complained of were put to persons subsequently found incompetent to sit on the jury? All the previous proceedings as to them become utterly immaterial by the action of the triers.

2. This court having determined, in the before-cited cases from Utah, that the laws of that Territory must control the selection of jurors in the Territorial courts, and the statute expressly requiring the action of triers to settle disputed questions of actual bias, any discussion of the second assignment of error will be postponed until we have heard or seen what the plaintiff's counsel have to say in support of it.

3. As to the third assignment, that "it was error for the triers to inquire into or consider the religious belief of any of the jurors," it might be sufficient to say that the record fails to show that the triers did anything of the kind. All it states is the putting of such questions by the court or district attorney, then a challenge by the latter for cause and "actual bias," a denial of the challenge by the defense, the appointment of triers, and their finding that "the challenge is true." (Record, 4, 6, 8.)

We prefer, however, to accept as true the assumption that the triers did propound such questions and base

their finding upon the replies elicited, and to vindicate this course of procedure.

The challenge and its denial made up the issue whether or not there was "the existence of *a state of mind* on the part of the juror which leads to a just inference, in reference to the case, that he will not act with entire impartiality."

The mental status of the juror was to be determined by, and according to the rules of, evidence. It was a pertinent, material fact. (Stephen, Dig. of Ev., 1, cited *supra*.) As to it, he might be a witness, and, in that capacity, contradicted or disbelieved. True, "it is in his power to conceal it from all other men. If he does nothing by word or act to disclose it, no one else can penetrate to it, no other person need imagine its existence. But the man himself, in whose mind it exists, can and often does disclose it to others purposely and expressly, by his words, oral, or in writing. And, besides, through some act of his, undesignedly on his part, his intention [or state of mind] may be revealed. If from his intention [or mental state] as their source he does certain acts, from them other persons may, contrary to the man's will and expectation, infer the intention [or mental condition] from which his acts proceeded." (Ram on Facts, 275.)

These men avowed their connection with the Mormon Church, and their belief in its tenets. The state of mind which led to such action and declarations was a natural and easy inference. What the effect of that mental condition would be is accurately stated by Boreman, J., at the commencement of his opinion. (Record, 105, bottom.)

This, however, like the actual mental state, was to be

ascertained and declared by the triers. They were first to learn the existing state of mind; and then to say whether or not it was justly inferable therefrom that the juror would not act with entire impartiality with reference to the case. Belief, religious or other, is of itself "the existence of a state of mind" from which just inferences can be drawn as to man's course of action, though professed belief and conduct are not always in accord. But when we find men attached to an organization holding to certain doctrines which are carried into practice very generally, though such practice arrays the actors against the laws of the country and the sentiment of the civilized world, we may well infer that all who retain an active membership of such organization and avow a belief in the propriety and even in the divine origin and sanction of the interdicted practice, will sympathize with, and actually be biased in favor of, those called into judgment on account of such practices.

What the Utah Code denominates as a challenge for actual bias was known to the common law as a challenge *per affectum*, or for favor.

Burrill (1 Law Dict., 199) defines this to be where the challenging party "objects only some *probable circumstances of suspicion*, as acquaintance and the like, the validity of which must be left to the determination of triers, whose office it is to decide whether the juror be favorable or unfavorable."

Bouvier says this challenge lies and will be sustained where "there are reasonable grounds to suspect that he will act under some undue influence or prejudice. *The causes for such challenge are manifestly very numerous, and depend upon a variety of circumstances.* The fact to

be ascertained is whether the juryman is altogether indifferent as he stands unsworn, because, even unconsciously to himself, he may be swayed to one side." This means, obviously, indifferent in his feelings. But one who could be "altogether indifferent" in his feelings while seeing an associate, a fellow of the same society, arraigned as a criminal and exposed to disgrace and imprisonment for an act which he and the juror both deemed right and stamped with Divine sanction, would be an anomaly, not fit for jury service.

It is enough to call for triers, however, and to leave the matter to their final decision, that there be "some probable grounds of suspicion." (2 Tidd's Practice, 853; 3 Bla. Com., 363.)

"We deem it our duty, however, to say that, in our judgment, the members of any association of men, combining for the purpose of enforcing or withstanding the execution of any particular law, and binding themselves to contribute money for such purpose, cannot be held to be indifferent, and therefore ought not to be permitted to sit as jurors in the trial of a cause in which the question is whether the defendant shall be found gulty of violating that law." (Com. *v.* Livermore, 4 Gray, 20, 21; People *v.* Reyes, 5 Cal., 347; March *v.* P. & C. R. R., 19 N. H., 375, 376; Reynolds *v.* U. S., 98 U. S., 157, lower half.)

The late Mr. Justice Grier, while upon the circuit, allowed "questions more searching than usual," because of the agitation of the public mind upon the subject connected with the prosecution. (U. S. *v.* Hanway, 2 Wallace, jr., 142; *Ib.*, 152.)

II.

The next three assignments (fourth, fifth, and sixth) relate to declaration of the prisoner as to his marriages. (Record, 113, bottom.)

Miles stood indicted because, having first married Emily Spencer and had her to wife, he subsequently married and took to wife one Caroline Owens. (Record, 2.) It became essential to prove each marriage. It is an ordinary mode of establishing the existence of the marriage relation to use the declarations of the parties for that purpose. (See 1 Bishop on Marriage and Divorce, §§ 497 *et seq.*, and numerous cases by him cited. See, also, the citations in Judge Boreman's opinion, Record, 107, bottom.)

This is the head note of an English case decided in 1843: "On an indictment for bigamy, the first marriage may be proved by the admissions of the prisoner; and it is for the jury to determine whether what he said was an admission that he had been legally married according to the law of the country where the marriage was solemnized." (Regina *v.* Simmonsto, 1 Car. & Kir., 164. See, also, *Id.*, 165, note.)

One of Stephen's illustrations of the meaning of "fact" (below quoted), is "That a man said certain words is a fact."

Miles's statement that he had committed bigamy would have been evidence. This conversation *tended* to prove one of the elements of that offense, if not the whole offense, and it was for the jury to consider what weight should be given it. It was admissible for whatever it was worth; and, certainly, was not privileged. (State *v.* Center, 35 Vt., 378, 382, 386.)

"Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction or subject-matter, are relevant to the fact with which they are so connected." (Stephen, Dig. of the Law of Ev., chap. ii, art. 3.)

III.

The seventh assignment (Record, 114, top), objecting to the testimony of D. H. Wells, as to the dress or robes worn by those visiting the endowment house, is untenable for the same reason. The character of the dress exclusively worn by brides being known, it was part of the *res gestæ*, a virtual declaration of Miles, that the women he accompanied to and from the endowment house, clad in such garments, were his brides.

Stephen's first definition of "fact," quoted *ante* ("Everything capable of being perceived by the senses"), he illustrates by saying: "That there are certain objects arranged in a certain order in a certain place is a fact; that a man saw or heard something is a fact; that a man said certain words is a fact."

IV.

Though the question of the first marriage is always one of fact for the jury, it must necessarily devolve upon the court to rule whether or not sufficient evidence of it has been introduced to permit the reception of the second wife's testimony. The eighth assignment, therefore, cannot be sustained. (Reynolds *v.* United States, 98 U. S., 145.)

If the jury were not first satisfied of the prior marriage the proof of the second would be immaterial, and could not injure the prisoner.

The defendant's own admissions prove not only the marriage with Emily Spencer, but that it was a first marriage—prior to that to Caroline Owens.

V.

The ninth assignment is to the exclusion of testimony offered by Miles tending to show that he was married to Caroline Owens. It was not material to his defense to show himself married to either of the two women mentioned in the indictment; whereas it was incumbent upon the prosecution to prove him married to both. So he could not be injured by this exclusion.

VI.

The tenth, eleventh, and twelfth assignments are that the court erred in the instructions voluntarily given to the jury and in those given at the request of the prosecution. (Record, 114.)

Turning to the charge (Record, 94,95), we find that the only exception taken was to the whole charge generally. This court and the highest courts of the several States have so often refused to consider an exception of that kind that it will not be noticed here.

Nor is it necessary to add aught, beyond what has already been written, as to the instructions given upon request of the prosecuting officer.

VII.

The remaining assignments (13, 14, and 15), grounded upon the rejection of the defendant's request, and chiefly upon the character of the evidence proving the first marriage with Emily Spencer, do not require any particular

examination, in view of the points already discussed. Further consideration of the errors assigned will be postponed until after the filing of the plaintiff's brief.

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